

# **EXHIBIT “1”**

1

UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 08-13555 (JMP)

In the Matter of:

LEHMAN BROTHERS HOLDINGS, INC., et al.

### Debtors.

United States Bankruptcy Court

One Bowling Green

New York, New York

January 30, 2009

4:38 PM

## B E F O R E :

HON. JAMES M. PECK

U. S. BANKRUPTCY JUDGE

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2 EMERGENCY TELEPHONIC HEARING re Debtors' Emergency Motion for  
3 an Order Pursuant to Section 362(a) of the Bankruptcy Code  
4 Enforcing the Automatic Stay

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Transcribed by: Lisa Bar-Leib

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P R O C E E D I N G S

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THE COURT: This is by counsel for the debtors in connection with an emergency motion and a proposed order to show cause fixing a hearing to consider that motion. Who's on the line?

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MR. WAISMAN: Good afternoon, Your Honor. For the debtors, Lehman Brothers Holding Inc. and Lehman Commercial Papers, Shai Waisman from Weil Gotshal & Manges.

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MR. COUCHOT: Good afternoon, Your Honor. This is Paul Couchot of Winthrop Couchot in Newport Beach, California on behalf of the what is referred to in the motion as the SCC entities.

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THE COURT: Is there anyone else on the line? Is there anyone else who needs to be on the line?

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MR. WAISMAN: Your Honor, Shai Waisman. The creditors' committee, I believe, is joining. They might be delayed just -- by last minute nature of our request. I believe they're intending to join.

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THE COURT: I don't want to start this until everybody who should be on the line has already joined. So maybe we should take a five minute break until they join. It might be worth having somebody who has e-mail access or an ability to call offline to check and find out the status of their attempt to join the line. And also, if you could tell me who you think from the committee's team will be participating.

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1                   MR. WAISMAN: Your Honor, we have somebody calling as  
2 we speak. My understanding is that it will be Dennis O'Donnell  
3 of the Milbank firm for the committee.

4                   THE COURT: Okay. Let's just wait for a minute or  
5 two.

6                   MR. WAISMAN: Okay.

7                   (Off the record)

8                   THE COURT: So I'll turn it over to Mr. Waisman to  
9 explain what it is that he's seeking this afternoon.

10                  MR. WAISMAN: Thank you, Your Honor. And thank you  
11 to the Court and all the parties who are (indiscernible) on  
12 such short notice. Your Honor, what we are requesting is an  
13 emergency motion enforcing the automatic stay in these Chapter  
14 11 cases. The Court has had involvement with this matter  
15 before -- well, I'll briefly (indiscernible) through the facts  
16 without belaboring the record.

17                  THE COURT: I'm actually familiar with the facts.  
18 You can put this on the record if you wish but I have received  
19 copies of the debtors' moving papers, the emergency motion and  
20 the affidavit which you prepared as well as the proposed order  
21 to show cause. I note that there is an attachment of the  
22 transcript from a hearing that I remember very well that took  
23 place in November where Mr. Kessler was involved when he was  
24 one of your partners on behalf of the debtors in opposing  
25 relief from the stay being sought by the SSC (sic) parties.

1 And so, you can go through the facts if you wish but I'm  
2 telling you now that I'm familiar with the facts.

3 MR. WAISMAN: Okay, Your Honor. Thank you. And I'll  
4 therefore make it very short. As Your Honor pointed out, the  
5 SCC entities brought on an expedited hearing before the Court  
6 requesting a modification of the stay to proceed with  
7 unfettered discretion in their cases because if they did not  
8 have that relief they could (indiscernible) which immediately  
9 befall the properties including various threats to health and  
10 welfare. As a result, this Court referred the matter for  
11 expedited consideration on November 20th.

12 The movants made clear in that hearing that one of  
13 the reasons they needed to seek relief from the stay or be  
14 granted relief from the stay was because they intended to make  
15 a motion in their case to use LCPI's cash collateral. There  
16 was lengthy discussion of that on the record. At the  
17 conclusion of the hearing, Your Honor -- and I was not  
18 involved. My partner, Mr. Kessler, who has since retired from  
19 the firm, took the lead for LCPI in the matter but at the  
20 conclusion, the Court was very clear with the SCC entities.  
21 There were two ways to proceed. Either they come back before  
22 the Court with specific requests for relief that were clearly  
23 tied to the Sonnax factors at which point the Court would  
24 consider their requests and debtors' opposition, if any. Or  
25 the parties could work out their issues and settle the matter.

1 An order was entered subsequently, I believe, on the very next  
2 day. There was no appeal, no request for a rehearing. And, in  
3 fact, there was never a motion brought before Your Honor.

4 Quite astonishingly, instead of coming back to Your  
5 Honor, the SCC entities decided about two months later to  
6 disregard the automatic stay in these cases, disregard their  
7 appearance before Your Honor, disregard Your Honor's  
8 instruction, clear instructions as to how this matter was to  
9 proceed, and filed a motion in their case, which is also  
10 annexed to our emergency motion, and in the very first  
11 paragraph, on page 2, paragraph 8, the first line, seeking  
12 authorization for Palmdale Hills Property to use the surcharge  
13 pursuant to 506(c) that purported cash collateral of Lehman  
14 Commercial Paper Inc. Lehman Commercial Paper Inc. remains a  
15 debtor before this Court and the automatic stay remains in  
16 place. And we would ask that the automatic stay be enforced  
17 and Your Honor's original order stand and that the SCC entities  
18 not circumvent this Court and the automatic stay. And if they  
19 so choose to continue to prosecute a request for relief in cash  
20 collateral do so in accordance with the Bankruptcy Code and the  
21 directives of this Court. And the SCC entities are, 'cause  
22 they already have, likely a response that the stay has been  
23 completely waived by actions in their cases and that we should  
24 all forget what happened before Your Honor because the  
25 California court has authority to modify the stay in these

1 cases. This is exactly the position they've taken in their  
2 case on this very issue.

3 THE COURT: This is the first I'm hearing that.

4 MR. WAISMAN: There have been -- in addition to this  
5 motion, out of abundance of caution, LCPI responded in  
6 California. And its reply started off with there's an  
7 automatic stay in place. There was a hearing before Judge  
8 Peck. Judge Peck ruled and this is nothing more than an  
9 attempt to circumvent the automatic stay and the Court's  
10 ruling.

11 THE COURT: Now just so I'm clear, Mr. Waisman, is  
12 today's telephonic proceeding one in which you are seeking the  
13 scheduling of a hearing or are you treating this as if it is  
14 the hearing itself because I'm hearing what amounts to  
15 substantive argument. I'm just trying to understand what we're  
16 doing.

17 MR. WAISMAN: I'm treating this, Your Honor, as the  
18 hearing itself.

19 THE COURT: And is that something that --

20 MR. WAISMAN: The SCC entities have requested to  
21 proceed with their motion to use LCPI's cash collateral on  
22 Tuesday of next week.

23 THE COURT: Well, here's my confusion. I just want  
24 to make sure that I know what's going on. And I was in another  
25 meeting when I first heard about this. Read the papers prior

1 to the start of this proceeding but when I read them, it was my  
2 belief that you were seeking an order to show cause to schedule  
3 this for a hearing sometime next week perhaps on Monday because  
4 the order to show cause includes a blank date and indicates  
5 that the motion is to be served on or before January 30 on all  
6 parties entitled to receive notice of the motion.

7 So my first question is what are we doing right now.  
8 And is this a consensual hearing on the merits of your motion  
9 or is this is a consensual hearing with respect to the order to  
10 show cause or is there no consent? I just want to know what's  
11 going on.

12 MR. COUCHOT: May I speak, Your Honor?

13 THE COURT: And is that Mr. Couchot? Couchet?

14 MR. COUCHOT: Yes, Your Honor. Couchot.

15 THE COURT: Couchot?

16 MR. COUCHOT: Yes. Your Honor --

17 THE COURT: I remember that you --

18 MR. COUCHOT: Your Honor, I'm appearing today and I  
19 rearranged plans that I had because I was told that you wanted  
20 me to make myself available. So that's why I'm here. I'm not  
21 consenting to anything. We filed a reply today that was  
22 (indiscernible) at noon today and our position on today's issue  
23 is set forth in that reply. And I disagree with the  
24 characterizations made about what the motion was. And I  
25 understand Your Honor was there and you said you remember it

1 very well. But the thrust of the motion was --

2 THE COURT: You were there, too. My recollection is  
3 you were sitting in the courtroom as Morgan Lewis & Bockius was  
4 arguing the motion. And you were physically present and I was  
5 looking right at you.

6 MR. COUCHOT: Absolutely.

7 THE COURT: Okay. So we know who we are and we know  
8 that we were both present at a time when I made an absolutely  
9 clear ruling that you heard. And are you telling me that you  
10 decided I'll just try my luck in California before Judge Smith?

11 MR. COUCHOT: No. That's not what happened, Your  
12 Honor.

13 THE COURT: Well, you better tell me what happened.  
14 You better tell me clearly and treat yourself as if you're  
15 making a representation to the Court that's subject to  
16 sanctions if it's not accurate.

17 MR. COUCHOT: Yes, Your Honor.

18 THE COURT: Go ahead.

19 MR. COUCHOT: We believed that our motion was  
20 primarily one of two things. I was -- two different things.  
21 One we were asking for the Court to give us relief from stay to  
22 file a priming motion in California. And on top of that, we  
23 asked for a general relief as best we could to administer the  
24 cases. The emergency nature -- and in the general relief, we  
25 listed several different things that, you know, might possibly

1 need to do and cash collateral was absolutely one of those  
2 things.

3 The focus at the hearing, and I've reread the  
4 transcript, was that the (indiscernible) term sheet on a DIP  
5 financing that clearly the judge -- Your Honor, in my view,  
6 after reviewing the (indiscernible) right now made a  
7 determination that the priming lien loan would violate the  
8 stay.

9 THE COURT: No. You're absolutely -- you are totally  
10 and completely wrong. And if you're trying to recharacterize  
11 what I said, you better be careful. I remember it and I've  
12 also recently reviewed the transcript. And I remember very  
13 clearly the procedural history. It was a general motion  
14 seeking relief from the automatic stay without specificity.  
15 Your counsel when you were present in court made an argument  
16 that was wonting in all respects because of a failure to deal  
17 with Second Circuit applicable precedent, the Sonnax standards.  
18 And, in fact, when asked to identify how the Sonnax standards  
19 applied failed completely and ducked the question. I remember  
20 the hearing extremely well.

21 MR. COUCHOT: I agree that that occurred during the  
22 hearing, Your Honor. I'm not trying to --

23 THE COURT: Now, if you are attempting through this  
24 conversation to characterize my ruling or my order, you are out  
25 of order. If this is some kind of explanation as to how you

1 think this is permissible behavior, you are wrong. It is  
2 completely impermissible and sanctionable behavior and, in my  
3 view, constitutes a willful violation of the automatic stay.  
4 You could not have been on more direct and obvious notice than  
5 you were. I was looking right at you.

6 Now what are you going to do?

7 MR. COUCHOT: Your Honor, if you're telling me that  
8 your order -- I'm going to obey your order.

9 THE COURT: Excuse me?

10 MR. COUCHOT: I said I'm going to obey what you're  
11 saying. I'm going to comply with what you're saying today.

12 THE COURT: Only because I've just said it?

13 MR. COUCHOT: Your Honor --

14 THE COURT: There was no motion for reconsideration.  
15 There was no appeal. And, in fact, if you remember clearly  
16 what I suggested in the strongest possible terms, I suggested  
17 that counsel meet and confer in an effort to develop a means by  
18 which your client could deal with Lehman. Did that happen?

19 MR. COUCHOT: Yes, Your Honor. It did. We flew back  
20 the next week and that was done personally. Yes, we made -- I  
21 called, I believe, Mr. Kessler the next day and requested a  
22 face-to-face meeting. And we flew back to New York and met  
23 with Lehman, Mr. Kessler and with two representatives of  
24 Alvarez & Marsal.

25 THE COURT: And what was the result of that?

1 MR. COUCHOT: Well --

2 THE COURT: Now these are settlement discussions so  
3 it may be you don't want to talk to me about it.

4 MR. COUCHOT: Yes, that's my hesitancy, Your Honor.

5 I mean, I would love to tell you what happened but I -- suffice  
6 it to say we were very far apart.

7 THE COURT: And you apparently made the decision not  
8 to file, which was your privilege if you chose to exercise it,  
9 a follow-up motion for stay relief. But instead, to act as if  
10 what happened here didn't count, didn't matter?

11 MR. COUCHOT: May I speak, Your Honor?

12 THE COURT: Of course.

13 MR. COUCHOT: There's a related case involving SunCal  
14 entities and Lehman Commercial Paper before Judge Smith. In  
15 that case, Judge -- he's actually represented by Mr. Al Siegel,  
16 who's the Chapter 11 trustee in that case -- moved for use of  
17 cash collateral in Judge Smith's courtroom. Lehman Commercial  
18 adamantly opposed the motion. Lehman Commercial did not raise  
19 the stay as being invoked. And in a fully briefed -- I think  
20 there were two different hearings on the issue. It never once  
21 raised -- and in our view -- again, I know you disagree with me  
22 but, in our view, cash collateral was not the focus and there  
23 was no determination in your courtroom that cash collateral  
24 violated -- the use of cash collateral would violate the stay.  
25 What we heard -- what I heard was talk to Lehman, try to work

1 something out. I'm not giving you general relief. If you  
2 think that you need relief from stay, come back and be  
3 specific. From our standpoint, at this point in time, Lehman  
4 Commercial was not taking the position that the use of cash  
5 collateral violated the stay. And we did our own research and  
6 we felt that that was the case. And we figured, from our  
7 thinking, we had a hearing -- we got a conference in front of  
8 Judge Smith and I announced that we were going to use -- make a  
9 motion for the use of cash collateral. We even had a turnover  
10 motion on this account and we worked conceptually with Lehman  
11 at the divided briefing schedule. We even had further talks to  
12 try to work things out as recently as, I believe, yesterday or  
13 the day before. And it was only until we received their  
14 opposition that we understand that they were taking a position  
15 that the use of cash collateral violated the stay and that your  
16 order did so, too, that your order had made that determination.  
17 And I've looked at the transcript and I think you did make that  
18 determination after a priming lien because that's what --  
19 you're right. The in the (indiscernible) general order and  
20 everything else you said about that hearing is correct. But  
21 the cash collateral issue was one of the several -- list of  
22 things that really wasn't the focus. The focus was, in my  
23 opinion, was what you've mentioned, was that we need to go  
24 through those factors and that the priming lien motion you said  
25 would be burdensome to the estate and would harm the estate and

1 therefore, clearly, in my mind you said there was a violation  
2 of the automatic stay. But we proceeded with this motion in  
3 good faith that Lehman Commercial was not taking the position  
4 that cash collateral violated the stay. In that related case  
5 that's in front of Judge Smith.

6 THE COURT: Okay. Well, I know nothing about that  
7 related case. And this is not a hearing on possible sanctions  
8 for willful violation of the automatic stay although that may  
9 happen at some time in the future at which point the comments  
10 you're making might be helpful. They're not helpful to me now.

11 MR. COUCHOT: I have the reply papers, Your Honor,  
12 that has all that information in there that I could e-mail to  
13 you as well.

14 THE COURT: I don't need to see them tonight.

15 MR. COUCHOT: Okay.

16 THE COURT: The only thing that is before me now, and  
17 I think I've already made clear what my position is, is that  
18 you have no stay relief. You know you have no stay relief.  
19 And that denial of the motion brought by you and your local  
20 counsel, Morgan Lewis & Bockius, in November speaks for itself  
21 and there is a final order which denies that motion. The legal  
22 consequences of that denial are what they are. I have no  
23 knowledge, and I don't expect to get that knowledge now, as to  
24 what happened in California. To the extent relevant, I'll  
25 learn it in due course.

1                   The only thing which is before me is an emergency  
2 motion to enforce the automatic stay. It is enforced to the  
3 extent applicable. I'm not expanding it nor am I taking away  
4 from counsel the ability to reach agreements to modify it. But  
5 if you don't come here and seek consensual relief from stay or  
6 relief from stay with appropriate motion practice, you are at  
7 full risk as is your client. Act accordingly.

8                   MR. COUCHOT: Well, thank you for making that --  
9 allowing me to make a record, Your Honor.

10                  THE COURT: Excuse me?

11                  MR. COUCHOT: I appreciate the fact that you allowed  
12 me to make the record on that. Thank you.

13                  THE COURT: I didn't think that's what just happened  
14 but okay. I just heard you make some statements about what you  
15 believe may have given you cause to believe that what you were  
16 doing was permissible. I have not for a moment suggested that  
17 I agree with you. Nor is there a record here on the basis of  
18 which I could make such a finding. We're just having a  
19 conversation.

20                  MR. COUCHOT: I understand, Your Honor.

21                  THE COURT: Now what happens next, Mr. Waisman?

22                  MR. WAISMAN: Your Honor, I believe Your Honor's  
23 ruling is clear. I believe the stay is in force and --

24                  THE COURT: There could never be a doubt on that  
25 question.

1 MR. WAISMAN: I believe the SCC entities need to act  
2 in accordance with the stay and whatever the stay applies to.  
3 And I think that point has been made clear. But I would expect  
4 that there would be either a consensual resolution among the  
5 parties or a motion on proper notice and properly briefed  
6 before this Court for modification of the stay that Your Honor  
7 will rule on one way or the other in due course and that there  
8 would be any proceedings before that.

9 As for the other allegations of waiver and the like,  
10 there's no need to belabor the record. When and if those  
11 issues are relevant, they'll be addressed.

12 MR. COUCHOT: May I speak, Your Honor?

13 THE COURT: Of course.

14 MR. COUCHOT: This waiver is definitely not -- that  
15 was made. The issue is whether or not the use of cash  
16 collateral violates the automatic stay and that the -- Palmers  
17 indicates that it does not. In addition to the fact that  
18 Lehman Commercial did not waive its interrelated case, that it  
19 vigorously contested the use of cash collateral. And then,  
20 thirdly, for the record, my review of it, the Court did not  
21 make a finding that the use of cash collateral violated the  
22 automatic stay. And I --

23 THE COURT: Mr. Couchot, the only record that exists  
24 in this record, which is written down, we don't have to  
25 characterize it --

1 MR. COUCHOT: Right.

2 THE COURT: -- relates to a general motion made by  
3 your client for relief from the automatic stay. That motion  
4 was denied by final order without prejudice --

5 MR. COUCHOT: Yes.

6 THE COURT: -- with statements made on the record  
7 that we don't need to recharacterize. You and other counsel  
8 involved no doubt have considered the legal consequences of the  
9 actions that you have undertaken with eyes wide open. I don't  
10 want to hear now argument as to why you believe that the action  
11 you have taken is not covered by the order that I entered after  
12 denying your motion for relief from stay. It was not a  
13 specified targeted motion for relief from stay. Quite the  
14 contrary. It was a completely general give us full and  
15 complete relief from stay. Motion denied. That means that the  
16 stay applies to the extent it applies. As you well know as an  
17 experienced bankruptcy lawyer, careful lawyers almost always,  
18 when there's a close question, seek relief from stay to avoid  
19 the very severe sanctions that flow from -- especially flow  
20 from willful violations of the stay. You're in the zone of a  
21 willful violation. And this is not the time for you to defend  
22 yourself. That time may come.

23 MR. COUCHOT: Yes, Your Honor.

24 MR. WAISMAN: Your Honor, Shai Waisman. I actually  
25 thought that the issue was resolved. But based on the

1 statements that (indiscernible) made, I have concern as to what  
2 resources this estate has to expend in defending what is  
3 clearly within the stay and clearly within what was raised,  
4 argued and ruled on before this Court. I thought we were  
5 concluded.

6 THE COURT: I thought we were, too. But then again,  
7 every time I think we're done, I hear another argument from  
8 California as to why there's some belief the use of cash  
9 collateral is not covered by the automatic stay. I'm not  
10 deciding that now. It's not before me. But lawyers can figure  
11 this out. The use of cash --

12 MR. COUCHOT: I am sorry, Your Honor --

13 THE COURT: The use of cash collateral happens at the  
14 beginning of most Chapter 11 cases and involves either consent  
15 or adequate protection. That's Bankruptcy 101.

16 Now, can we conclude this evening's hearing? And if  
17 so, how?

18 MR. WAISMAN: I believe for the debtors we can  
19 conclude the hearing. I would (indiscernible) of this Court  
20 and this debtor. If Mr. Couchot could advise based on the  
21 Court's comments tonight whether we're proceeding with an  
22 attempt to use the debtor's cash collateral or the SCC entities  
23 are going to regroup and advise how they will proceed next  
24 including to fully vindicate their rights before this Court.  
25 That would go a long way and be very helpful. If we need to

1 defend against the use of cash collateral in California, we  
2 will do so. And at the same time, we will bring additional  
3 motion practice before Your Honor.

4 MR. COUCHOT: My recommendations to my client will be  
5 to come back to New York and file a motion for use of cash  
6 collateral -- I mean, for relief from stay for the use of cash  
7 collateral.

8 THE COURT: I'll tell you what. If the lawyers  
9 involved are going to have a conversation about how to resolve  
10 the matter which is not before me but is before Judge Smith in  
11 the Central District of California, that doesn't have to be on  
12 this record.

13 MR. WAISMAN: In that case, Your Honor, perhaps we  
14 can take leave of the Court and Mr. Couchot and I can  
15 conference afterwards and assuming these debtors are properly  
16 convinced that there is no more of a -- no risk with violations  
17 of the stay, the matter would be concluded. And if not, it  
18 would be our burden to come back to Your Honor.

19 THE COURT: Fine. If you need further access at any  
20 time before the hearing is presently scheduled, you can have  
21 such access on Monday.

22 MR. WAISMAN: Thank you, Your Honor. That's greatly  
23 appreciated as is the access today and apologize to everybody  
24 for the short notice.

25 THE COURT: No. This is an important matter and no

22

1       apologies are needed.

2                    MR. COUCHOT: Thank you, Your Honor.

3                    MR. WAISMAN: Thank you, Your Honor.

4                    THE COURT: Have a good weekend, all. Bye.

5                    MR. WAISMAN: Bye.

6                   (Whereupon these proceedings were concluded at 5:18 p.m.)

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4 R U L I N G S

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DESCRIPTION	PAGE	LINE
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Previous ruling of 11/20/08 denying SCC entities' relief from the automatic stay enforced	16	24
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2 C E R T I F I C A T I O N

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4 I, Lisa Bar-Leib, certify that the foregoing transcript is a  
5 true and accurate record of the proceedings.

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Lisa Bar-Leib

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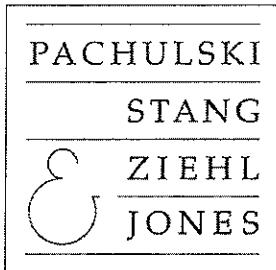
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## **EXHIBIT “2”**



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Dean A. Ziehl

January 11, 2010

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**VIA E-MAIL**

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Paul J. Couchot  
**Winthrop Couchot, P.C.**  
660 Newport Center  
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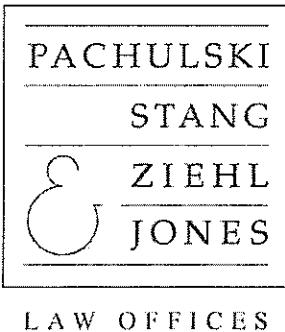
William N. Lobel, Esq  
**The Lobel Firm**  
840 Newport Center Drive  
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Newport Beach, CA 92660

**Re: In re Palmdale Hills**

Gentlemen:

As discussed during a meet and confer with the Miller Baroness firm on Friday, please advise us immediately concerning SunCal's intentions with respect to the equitable subordination action and the discovery propounded by SunCal, in light of the decision issued by the Bankruptcy Appellate Panel on December 15, 2009. Under that decision, further prosecution of the equitable subordination action violates the automatic stay in the bankruptcy cases of Lehman Brothers Holding, Inc. ("LHBI") and Lehman Commercial Paper Inc. ("LCPI").

Specifically, the Panel found that "the adjudication of Debtors' equitable subordination claim violates Lehman Commercial's automatic stay" and that "the New York bankruptcy court must have



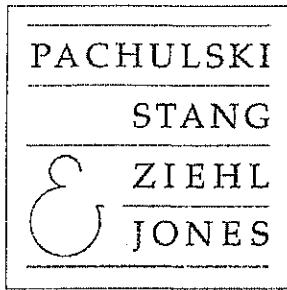
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William N. Lobel  
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the final say as to whether the automatic stay applies to the bankruptcy case before it.” Op. at 19. It further noted that “Debtors may either seek relief from stay or initiate the equitable subordination action against Lehman Commercial in the New York bankruptcy case.” Op. at 19-20.

SunCal’s argument that Judge Smith’s classification of the Fenway repurchase agreement as a true sale renders the automatic stay issue moot is incorrect. As you know, even if the repurchase agreement is considered a true sale, LCPI still holds interests in all or part of two loans and the liens securing them, and Judge Smith has not yet ruled on the motion for clarification of her order regarding the status of these liens. The Panel rejected SunCal’s argument that the automatic stay appeal was moot on this basis, ruling that “[e]ven if Lehman Commercial has no interest in the Fenway Capital Loans, it has an interest in at least one of the loans to Debtors” and “Lehman Commercial also has an interest if and when the October Order becomes final and is successfully appealed.” Op. at 8-9.

Furthermore, as SunCal is fully aware, LBHI is the real party in interest with respect to the loans, and Fenway has no economic interest in the loans. As Irena Goldstein stated in her declaration:

While it is correct that Fenway purchased interests in the loans pursuant to a repurchase agreement, it is not true that “the Lehman Entities relinquished all right, title and interest” in the loans. . . . [T]he loans serve as the ultimate collateral for the CP Notes issued by Fenway Funding to LBHI. LBHI pledged the CP Notes to JPM. . . . JPM did not foreclose on the commercial paper notes, and they are accordingly, the property of LBHI, subject to JPM’s lien. While Fenway Capital may have legal title to interests in the loans in question, LBHI has the beneficial interest. . . . If loan proceeds are paid to Fenway Capital, those same proceeds



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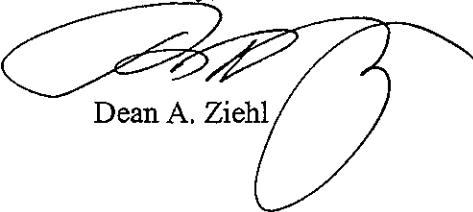
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will be transferred ultimately to LBHI. Conversely, neither Fenway Capital nor Fenway Funding is liable for amounts under the CP Notes under the governing agreements in the event there are insufficient proceeds from the loans to repay in full the CP Notes. The holder of the CP Notes ultimate recourse is only to the underlying collateral. Simply put, Fenway has no "skin" in the game.

6/18/09 Dec. of Irena Goldstein, ¶¶ 5-6. As the Panel noted in ruling that the appeal was not moot, "Lehman Commercial . . . may possibly have an interest in the Fenway Capital Loans under a contractual repurchase obligation. . . . Therefore, Lehman Commercial has standing to appeal the Denial Orders despite the October Order." Op. at 8-9. Accordingly, the action cannot be maintained even against Fenway alone without obtaining relief from stay in the Lehman cases.

I look forward to discussing the foregoing with you.

Sincerely,

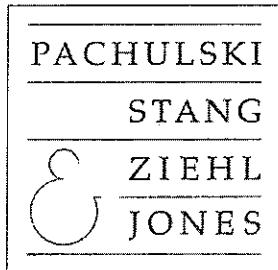


Dean A. Ziehl

DAZ

cc: Via E-Mail  
Lei Lei Wang Ekvall, Esq.  
Alan J Friedman, Esq.

## **EXHIBIT “3”**



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January 27, 2010

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**Re: In re Palmdale Hills**

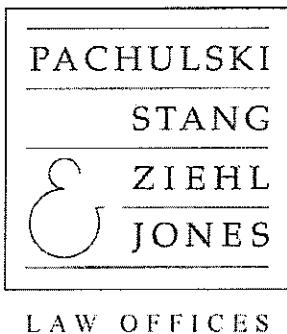
Gentlemen:

We feel compelled to respond to Paul Couchot's letter dated January 15, 2010 which proffers a fundamentally flawed legal and factual defense for the SunCal Debtors' continuing violations of the Lehman Debtors' bankruptcy stay. Since Special Litigation Counsel and the Chapter 11 Trustee Counsel do not appear to have been copied with Mr. Couchot's letter, we attach a copy for your reference.

As you are well aware, the December 15, 2009 opinion issued by the Bankruptcy Appellate Panel of the Ninth Circuit (the "Panel") made clear that "the adjudication of Debtors' equitable subordination

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claim violates Lehman Commercial’s automatic stay.”<sup>1</sup> The opinion also left no doubt that “the New York bankruptcy court must have the final say as to whether the automatic stay applies to the bankruptcy case before it.”<sup>2</sup> Despite this, your letter dated January 15, 2010 argues that it would be ill-advised and procedurally improper for Lehman Commercial Paper, Inc. (“LCPI”) to go before the Bankruptcy Court for the Southern District of New York (the “New York Bankruptcy Court”) and seek to enforce the automatic stay against the equitable subordination litigation – the very procedure that the Panel’s opinion clearly authorized and contemplated. In support of your conclusion, you rehash arguments that have already been rejected by the Panel, you once again parade recycled mischaracterizations of the record that have already been the subject of numerous hearings, and you ignore governing law.

To begin with, your contention that certain rulings issued by Judge Smith on October 2, 2009 clearly and conclusively determined that LCPI lacks ownership interests in the commercial loans made to the SunCal Debtors has no support in the record.<sup>3</sup> As you are well aware, the SunCal Debtors made this argument to the Panel, and it was rejected.<sup>4</sup> The Panel held that “it is not clear that all the loans Lehman Commercial made to the Debtors were the subject of the October Order.”<sup>5</sup> In fact, the October Order clearly *did not* address ownership

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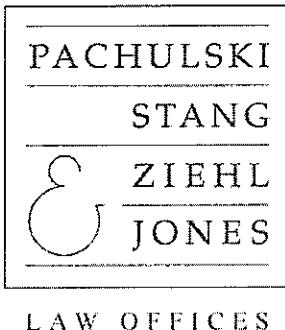
<sup>1</sup> *Lehman Commercial Paper, Inc. v. Palmdale Hills Property, LLC (In re Palmdale Hills Property, LLC)*, BAP Nos. CC-09-1100-HPaMk, BAP Nos. CC-09-1101-HPaMk, BAP Nos. CC-09-1102-HPaMk, BAP Nos. CC-09-1103-HPaMk, BAP Nos. CC-09-1104-HPaMk, BAP Nos. CC-09-1105-HPaMk, BAP Nos. CC-09-1106-HPaMk, BAP Nos. CC-09-1107-HPaMk, at 19 (B.A.P. 9th Cir. Dec. 15, 2009) (slip op.).

<sup>2</sup> *Id.* at 19.

<sup>3</sup> Those rulings are the Order On Objections To And Motion For Order Striking Claims Filed By The Lehman Entities and the Findings Of Fact And Conclusions Of Law In Support Of Order On Objections To Claims (together, the “October Order”).

<sup>4</sup> See Motion to Dismiss Appeal for Lack of Jurisdiction; Declarations of Sean A. O’Keefe and Paul J. Couchot in Support Thereof at 5-6; Appellee’s Reply to LCPI’s Response to the Motion to Dismiss Appeal for Lack of Jurisdiction; Declarations of Sean A. O’Keefe in Support Therefor at 12-13 (“As [Judge Smith] found, the MRA is crystal clear on the issue of who owns what. Per the contract, LCPI sold *ALL* of its right, title and interest in the Sold Loans to Fenway Capital, LLC.”).

<sup>5</sup> *In re Palmdale Hills*, CC-09-1100-HPaMk, at 8.



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of the revolver component of the loans. The October Order only encompassed those loans that were sold (in Bankruptcy Court's view) or transferred for security (in LCPI's view) "to Fenway Capital pursuant to the MRA."<sup>6</sup> The Master Repurchase Agreement, or MRA, required written confirmations to identify which loans were subject to the MRA.<sup>7</sup> There is no dispute that those required confirmations only describe the term components of the loans and identify face values that correspond only to the outstanding principal under the term components.<sup>8</sup> The October Order therefore only held that the term components of the loans were sold to Fenway, and the Lehman entities remain owners of the revolvers. More specifically, LCPI is the owner of the Ritter Ranch Revolver Loan, and therefore has a sufficient property interest to invoke its automatic stay.<sup>9</sup>

Likewise, your contention that LCPI "never raised the revolver argument" before entry of the October Order is equally ill-founded and contradicts representations that the SunCal Debtors made to the Panel. In briefing submitted to the Panel, the SunCal Debtors admitted that LCPI raised the "revolver argument" in a July 24, 2009 brief to the Bankruptcy Court and did so again in an August 17, 2009 memorandum to that court.<sup>10</sup> Moreover, the SunCal Debtors acknowledged that LCPI raised this argument at a July 28, 2009 status

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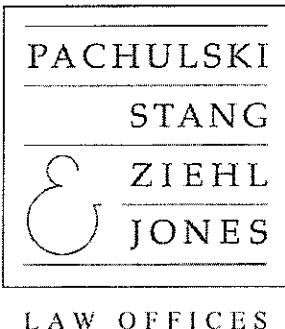
<sup>6</sup> See Findings Of Fact And Conclusions Of Law In Support Of Order On Objections To Claims ¶ 1.9.

<sup>7</sup> MRA § 3(b).

<sup>8</sup> See Lehman Commercial Paper Inc., Lehman ALI, Inc., Northlake Holdings LLC, and OVC Holdings LLC's Memorandum Responding to the Court's Inquiry at July 28, 2009 Status Conference Regarding Lehman Lenders' Retention of Certain Revolver Loan at 5-6.

<sup>9</sup> To be clear, my letter dated January 11, 2010 does not refer to the Ritter Ranch Mezz Loan. In stating that "even if the repurchase agreement is considered a true sale, LCPI still holds interest in all or part of two loans and liens securing them, and Judge Smith has not yet ruled on the motion for clarification of her order regarding the status of these liens," I was referring to (i) LCPI's right to repurchase the term component of the loans and (ii) LCPI's continued ownership of the revolver component of the loans.

<sup>10</sup> Appellee's Reply to LCPI's Response to the Motion to Dismiss Appeal for Lack of Jurisdiction at 7; Declaration of Sean A. O'Keefe in Support Therefor ¶ 8.



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conference.<sup>11</sup> In fact, the SunCal Debtors represented to the Panel that the October Order was “entered after the lower court had already considered LCPI’s revolver argument.”<sup>12</sup> The SunCal Debtors’ current argument that LCPI “never raised the revolver argument” before entry of the October Order is simply incorrect, at best.

Only by ignoring the Panel’s opinion and misconstruing the record can the SunCal Debtors conjure up a phantom “collateral attack” on the October Order. The Panel made it crystal clear that the equitable subordination action violated LCPI’s automatic stay. An action to enforce LCPI’s automatic stay in the New York Bankruptcy Court cannot possibly constitute a “collateral attack” because that is the very procedure that the Panel authorized in its opinion.<sup>13</sup> In fact, any effort by the SunCal Debtors to hinder LCPI’s right to enforce its automatic stay in the New York Bankruptcy Court would constitute an impermissible “collateral attack” on the Panel’s opinion. In addition, it is equally clear that the October Order did not address the Lehman entities’ interests in the revolver loans. Your misreading of the October Order does not mean that “it is an adjudicated fact that LCPI does not own *any interest* in the Sold Loans.”<sup>14</sup>

Furthermore, even if the revolver components of some loans were sold to Fenway, which is clearly not the case, LCPI would still have sufficient property interests to enforce its automatic stay. As you are well aware, the MRA gives LCPI the right to repurchase the loans that were transferred to Fenway. Your letter contends that, the

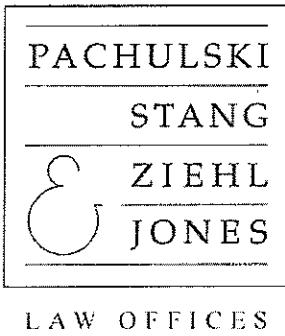
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<sup>11</sup> Appellee’s Reply to LCPI’s Response to the Motion to Dismiss Appeal for Lack of Jurisdiction at 7.

<sup>12</sup> *Id.* at 14.

<sup>13</sup> See *In re Palmdale Hills*, CC-09-1100-HPaMk, at 19.

<sup>14</sup> To score points, the SunCal Debtors again note that the October Order stated (once) that it was a “misrepresentation” to describe the Lehman Lenders as creditors on the loans transferred to Fenway. Despite your implication to the contrary, we have no doubt that Judge Smith *does not* believe that either Mr. Pachulski or Mr. Soto “misrepresented” anything to the Court in their filings and arguments regarding the loans transferred to Fenway. Moreover, it is clear from the record and the context that Judge Smith used “misrepresentation” in its literal, not pejorative, sense – i.e., she believed that any statements in the prior filed proofs of claim inconsistent with her later findings were not accurate representations.



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automatic stay notwithstanding, the Bankruptcy Code allows a non-debtor counterparty to terminate a repurchase agreement upon an event of default such as an insolvency. Putting aside whether your contention accurately states the governing law, it is beside the point.<sup>15</sup> That is because Fenway has never terminated either the MRA or LCPI's right to repurchase. Nor would LCPI's right to repurchase or otherwise reacquire the loans transferred to Fenway be automatically extinguished by the filing of a bankruptcy or by not immediately repurchasing the loans upon the filing of a bankruptcy.<sup>16</sup>

Moreover, your contention that LCPI's right to repurchase does not constitute property of its estate completely ignores the governing law. As the Panel made clear, "the New York bankruptcy court must have the final say as to whether the automatic stay applies to the bankruptcy case before it."<sup>17</sup> Thus, Second Circuit law, not law from the Ninth Circuit or Delaware or Illinois, controls what constitutes property of LCPI's estate. The Second Circuit has adopted a very broad definition of what constitutes property of the debtor's estate: "Our analysis begins with 11 U.S.C. § 541(a)(1), which defined the bankruptcy estate as including 'all legal or equitable interest of the debtor in property as of the commencement of the case.' It would be hard to imagine language that would be more encompassing than this broad definition."<sup>18</sup> Not surprisingly, then, property of the estate

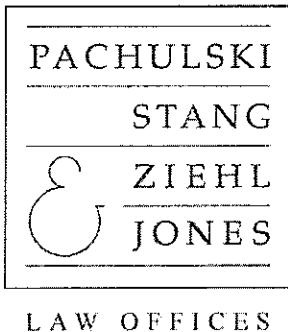
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<sup>15</sup> In any event, the provisions of the Bankruptcy Code concerning *ipso facto* clauses cited in your letter do not confer any rights or benefits on the SunCal Debtors. Those provisions are instead for the benefit of the non-debtor counterparty to a repurchase agreement, in other words, Fenway.

<sup>16</sup> See MRA §§ 11(a), (b).

<sup>17</sup> See *In re Palmdale Hills*, CC-09-1100-HPaMk, at 19. Judge Peck has also made it abundantly clear that he has the final authority to enforce LCPI's automatic stay. At a January 30, 2009 hearing, Judge Peck warned the SunCal Debtors that "if you don't come *here* and seek consensual relief from stay or relief from stay with appropriate motion practice, you are at full risk as is your client." January 30, 2009 Hearing Transcript (emphasis added).

<sup>18</sup> *Chartschlaa v. Nationwide Mut. Ins. Co.*, 538 F.3d 116, 122 (2d Cir. 2008). See also *Mercury v. Woodlawn Auto Workers*, F.C.U., 757 F.2d 512, 515 (2d Cir. 1985) (referring to 11 U.S.C. § 541(a), the court held, "The section's scope is very broad."); *Sterling Vision, Inc. v. Sterling Optical Corp. (In re Sterling Optical Corp.)*, 371 B.R. 680, 691 (Bankr. S.D.N.Y. 2007) ("The term 'legal or equitable interests . . . in property' has been broadly interpreted to include *any* legally



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includes “[e]very conceivable interest of the debtor, future, nonpossessory, contingent, speculative, and derivative.”<sup>19</sup> This broad definition undoubtedly includes LCPI’s contractual right to repurchase the loans transferred to Fenway. Indeed, the Second Circuit has expressly held that “[c]ontractual rights clearly fall within the reach” of § 541, which defines property of the estate.<sup>20</sup>

As property of the estate, contract rights are subject to the automatic stay and the cases cited in your letter do not hold otherwise.<sup>21</sup> *In re Riso* and *In re Vitogiannis*, which you cite in your letter, simply do not address whether actions that would impair contract rights that are also property of the debtor’s estate constitute violations of the automatic stay.<sup>22</sup> Instead, they concern whether certain contract rights are the type of property that are excepted from discharge under 11 U.S.C. § 523.<sup>23</sup> In *Competrol Acquisition Partnership v. Flag Wharf, Inc.*, also cited in your letter, the debtor argued that “the licenses [i.e., the underlying assets themselves] did constitute property of estate” and, as a result, the defendant’s actions

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enforceable right.”) (emphasis added); *In re Constable Plaza Assocs., L.P.*, 125 B.R. 98, 101 (Bankr. S.D.N.Y. 1991) (“In accordance with *United States v. Whiting Pools, Inc.*, 462 U.S. 198 (1983), the concept of property of the estate is to be given a broad application.”).

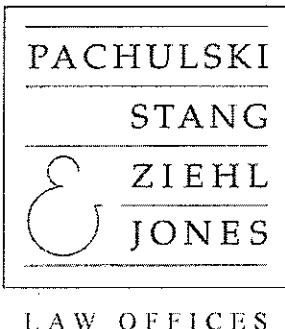
<sup>19</sup> *Chartschlaa*, 538 F.3d at 122. See also *In re Sterling Optical*, 371 B.R. at 691 (“Further, this definition is broad and includes even strictly contingent interests.”).

<sup>20</sup> *Chartschlaa*, 538 F.3d at 122. See also *Wallach v. Nowak (In re Sherlock Homes of W.N.Y., Inc.)*, 246 B.R. 19, 23 (Bankr. W.D.N.Y. 2000) (“To the extent that a listing contract was in existence at the filing of the bankruptcy petition, the underlying contract rights were property of the estate.”).

<sup>21</sup> See, e.g., *The Motorcycle Excellency Group, Inc. v. BMW of N. Am. (In re The Motorcycle Excellency Group, Inc.)*, 365 B.R. 370, 377-78 (Bankr. E.D.N.Y. 2006) (holding that contract rights in a franchise agreement, were property of the estate and subject to the automatic stay); *In re Enron Corp.*, 300 B.R. 201, 212 (Bankr. S.D.N.Y. 2003) (“Courts have consistently held that contract rights are property of the estate, and that therefore those rights are protected by the automatic stay.”).

<sup>22</sup> *In re Riso*, 978 F.2d 1151 (9th Cir. 1992); *In re Vitgiannis*, 2009 WL 1372065 (Bankr. N.D. Ill. 2009).

<sup>23</sup> *In re Riso*, 978 F.2d at 1153-54; *In re Vitgiannis*, 2009 WL 1372065 at \*13-14.



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violated the automatic stay.<sup>24</sup> Unlike LCPI, the debtor in *Competrol Acquisition* did not argue that impairment of its contract rights, as opposed to the underlying asset, constituted an independent violation of the automatic stay. Thus, not only are the cases cited in your letter not binding, they are not persuasive.

Furthermore, your letter, without citation to any authority, attempts to graft an “economic interest” or “economic reality” test onto the definition of property of the estate that has no basis in the governing law. As the *In re Sherlock Homes* court held, “Contract rights are assets of the estate, even when these contract rights would have had limited or even no value to the debtor itself.”<sup>25</sup> In any event, LCPI has not made an “economic interest” argument concerning its right to repurchase. Your letter appears to confuse the economic interest that Lehman Brothers Holding Inc. (“LBHI”) has in certain commercial paper with LCPI’s separate right to repurchase.

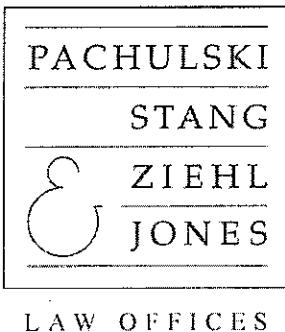
In addition to LCPI’s right to repurchase, the economic interest in certain commercial paper issued by Fenway Funding to LBHI constitutes property of LBHI’s estate. As your letter acknowledges, Fenway Funding issued commercial paper to LBHI that is backed, in part, by the loans transferred to Fenway Capital. In other words, proceeds from the loans transferred to Fenway Capital will be credited to the benefit of LBHI. Under Second Circuit law, this contractual right to receive payment from the proceeds of the loans transferred to Fenway Capital constitutes property of LBHI’s estate. As the court held in *Banner v. Bagen (In re Bagen)*, “[b]y defining the term ‘property of the estate’ broadly, Congress intended to encompass contingent future payments that were subject to a condition precedent on the date of the bankruptcy.”<sup>26</sup> Your letter suggests, without citation

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<sup>24</sup> *Competrol Acquisition Partnership v. Flag Wharf, Inc.*, 203 B.R. 914, 916 (D. Del. 2006).

<sup>25</sup> *In re Sherlock Homes*, 246 B.R. at 24-25.

<sup>26</sup> *Banner v. Bagen (In re Bagen)*, 186 B.R. 824, 829 (Bankr. S.D.N.Y. 1995). See also *Sletteland v. Orndorff*, 2 Fed. Appx. 225, 227 (2d Cir. 2001) (“This would be true even if, as the Orndorff Group claims, the debtor’s right to receive the net distributions should be characterized solely as a contractual right provided by the Guaranty, since it is well-settled that contractual interests of that type fall within the scope of 11 U.S.C. § 541(a)(1).”); *id.* at 228 (“The Orndorff Group have not provided any authority for their novel suggestion that one could not contractually



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to any authority, that LBHI's interest in the commercial paper does not constitute property of its estate because another party, JP Morgan, has asserted a right to foreclose on the commercial paper. But your suggestion amounts to little more than the proposition that property subject to a lien cannot constitute property of the debtor's estate -- a proposition that conflicts with the Second Circuit's interpretation of § 541.<sup>27</sup>

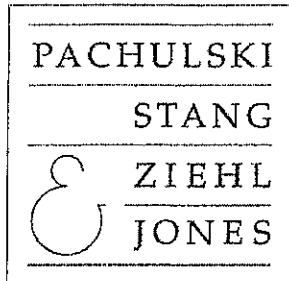
Your contention that the Bankruptcy Court has already rejected the argument that "LBHI is the real party in interest with respect to the loans" also mischaracterizes the record. LBHI's rights under the Fenway commercial paper was never an issue adjudicated before Judge Smith. In other words, contrary to your assertion, Judge Smith has never ruled that LBHI did not have a contractual interest or property right in the Fenway commercial paper. In any event, consistent with the Panel's opinion, the New York Bankruptcy Court is the proper place to seek to enforce that right.

In short, we do not intend to violate the October Order or any other orders, and nothing in our prior letter dated January 11, 2010 or your conversation with Mr. Pachulski suggested otherwise. As the Panel has recognized, the continued prosecution of the SunCal Debtors' equitable subordination claim and scorched earth discovery tactics are a continuing and willful violation of the Lehman Debtors' bankruptcy stay. We once again ask you to please advise what steps

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separate the right to payment of the dividends on a stock from the ownership of the stock itself for the purposes of classification under the Bankruptcy Code.").

<sup>27</sup> See, e.g., *In re Sterling Optical*, 371 B.R. at 691 ("The term 'legal or equitable interests . . . in property' has been broadly interpreted to include *any* legally enforceable right.").

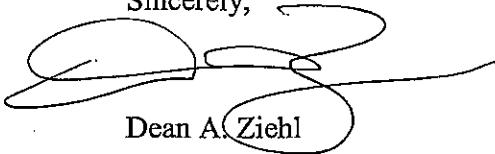


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the SunCal Debtors intend to take to stop violating LCPI's automatic stay and to comply with the Panel's opinion.

Sincerely,

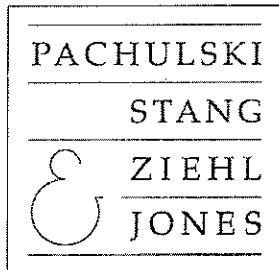


Dean A. Ziehl

DAZ  
Enclosure

cc: Via E-Mail  
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Alan J Friedman, Esq.

## **EXHIBIT “4”**



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Dean A. Ziehl

February 24, 2010

dziehl@pszjlaw.com  
310.772.2362

**VIA E-MAIL**

Paul J. Couchot  
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660 Newport Center  
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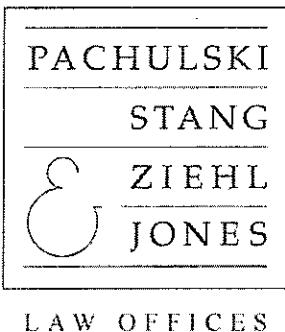
**Re: In re Palmdale Hills**

Gentlemen:

I write in response to your February 5, 2010 letter. The United States Bankruptcy Appellate Panel of the Ninth Circuit's (the "BAP") holding is crystal clear: "Debtors may not initiate an action or proceeding against Lehman Commercial that seeks affirmative relief, such as a counterclaim without violating the automatic stay."<sup>1</sup> You simply cannot reconcile the SunCal Debtors' position that they may pursue claims against LCPI, with the BAP's holding. For example, the SunCal Debtors' Fifth Claim for Relief against LCPI — to avoid and recover alleged fraudulent transfers under 11 U.S.C. §§ 544(b), 548

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<sup>1</sup> *Lehman Commercial Paper, Inc. v. Palmdale Hills Prop., LLC (In re Palmdale Hills Prop., LLC)*, No. CC-09-1100, 2009 WL 5812119, at \*8 (B.A.P. 9th Cir. Dec. 15, 2009).



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and Cal. Civil Code §§ 3439.04 and 3439.05 — clearly violates LCPI's automatic stay.

The BAP also ruled the SunCal Debtors may not "prosecute an adversary proceeding, or propose a reorganization plan, seeking to equitably subordinate Lehman Commercial's claim and transfer its liens to the estate in the California bankruptcy case without first obtaining relief from the automatic stay in the New York bankruptcy case."<sup>2</sup> Nonetheless, the SunCal Debtors' continue to propose a plan of reorganization that seeks to equitably subordinate LCPI's claims and transfer its liens to the SunCal Debtors. You cannot justify this violation of LCPI's automatic stay.

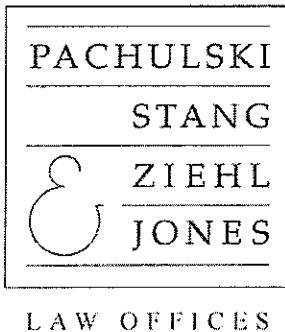
The SunCal Debtors also continue to improperly prosecute an equitable subordination claim against LCPI. They seek to equitably subordinate LCPI's claims and transfer any liens LCPI has securing those claims to the SunCal Debtors. You purport to have come to the conclusion that the equitable subordination claim against LCPI does not violate LCPI's automatic stay. But the BAP made it clear that the decision is not yours to make. Instead, "the New York bankruptcy court must have the final say as to whether the automatic stay applies to the bankruptcy case before it."<sup>3</sup>

Your argument regarding the ownership of the applicable revolver loans, including the Ritter Ranch Revolver Loan, remains unsupportable. The SunCal Debtors raised that argument before the BAP in support of their motion to dismiss the appeal for lack of jurisdiction, and the BAP rejected it and denied their motion. When Mr. Couchot raised this during the February 11, 2010 hearing in addressing the effect of the BAP's decision as regards to the stay issue, arguing that all of the LCPI loans had been sold, Judge Smith made it clear that the Bankruptcy Court always understood there were sold *and unsold* loans. At this point, the undisputed documents, the BAP, and Judge Smith have all recognized that for the claims at issue in the equitable subordination proceedings, some loans remain unsold. As

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<sup>2</sup> *Id.* at \*9.

<sup>3</sup> *Id.* at \*8.



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the applicable agreements and confirmations make clear, the Ritter Ranch Revolver Loan is one of them.<sup>4</sup>

The Ritter Ranch Revolver Loan is therefore property of LCPI's bankruptcy estate.<sup>5</sup> It represents a significant asset of LCPI's bankruptcy estate because LCPI has an approximately \$42.9 million dollar interest in that loan.<sup>6</sup> Under these facts, as the BAP recognized, the automatic stay clearly applies: “[b]ecause, in this case, equitable subordination would modify [LCPI's] property interest, we find it violates [LCPI's] automatic stay.”<sup>7</sup>

Additionally, the February 5 letter once again misconstrues inapposite cases while ignoring the governing law. The letter references *In re Miller*<sup>8</sup> and *In re Mahurkar*<sup>9</sup> to argue the SunCal Debtors need not formally dismiss LCPI from the adversary proceeding and may instead treat it as an “interested non-litigant.” But the issue in *In re Miller* was whether a debtor-defendant should comply with “discovery requests [that] are framed as discovery pertaining only to the claims” of non-debtor defendants.<sup>10</sup> Because *In re Miller* concerned only discovery relating to claims against non-debtors, it does not support your broader contention that “the SunCal Debtors would not be required to formally dismiss LCPI” from the adversary proceeding.

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<sup>4</sup> To be clear, the Lehman Lenders continue to maintain that none of the loans at issue were sold to Fenway but instead were transferred for security.

<sup>5</sup> You state that LCPI's position “is directly contradicted by the filed proofs of claims.” Whatever that sentence is intended to mean, the applicable proofs of claim clearly distinguish between the amount owed on the term loans and the revolver loans.

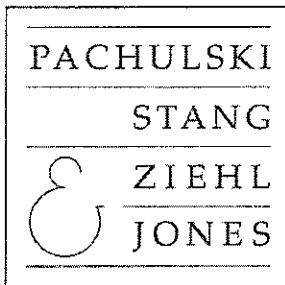
<sup>6</sup> This amount includes interest.

<sup>7</sup> *In re Palmdale Hills Prop., LLC*, 2009 WL 5812119, at \*1.

<sup>8</sup> 262 B.R. 499 (B.A.P. 9th Cir. 2001).

<sup>9</sup> *In re Mahurkar Double Lumen Hemodialysis Catheter Patent Litig.*, 140 B.R. 969 (N.D. Ill. 1992).

<sup>10</sup> 262 B.R. at 504. The court in *In re Mahurkar* similarly recognized that “discovery relating to claims against [the debtor] was stayed.” *Id.* (citing *In re Mahurkar*, 140 B.R. at 504-05).



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The relevant cases that squarely address whether plaintiffs may pursue their claims against non-debtors make it clear that, at a minimum, plaintiffs must first sever the debtor from the multidefendant proceeding. For example, in *Broadcast Music, Inc. v. Northern Lights, Inc.*,<sup>11</sup> the court held the plaintiff had to sever Northern Lights, Inc., a debtor, from the action before it could proceed against Kip Fink, a non-debtor:

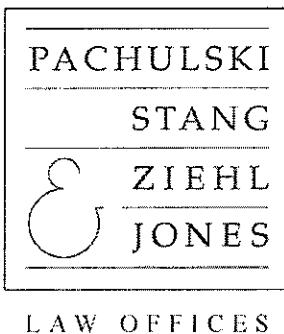
Due to Northern Lights, Inc.'s petition in bankruptcy, all judicial proceedings against it have been stayed pursuant to 11 U.S.C. § 362(a). As such, failing to sever the claim against Northern Lights, Inc. would result in plaintiffs' inability to recover from either defendant and a statistical closure of the entire case.

*N. Lights*, 555 F. Supp. 2d 328. Indeed, courts in the Second Circuit consistently require plaintiffs to formally sever debtor-defendants from multidefendant proceedings. See, e.g., *Cashman v. Montefiore Med. Ctr.*, 191 B.R. 558, 563 (S.D.N.Y. 1996) (severance of the debtor "is the only alternative to granting the stay for all parties in this action . . . the alternative to severance . . . is denying the plaintiffs any trial until [the debtor's] bankruptcy proceedings are resolved"); *Plessey Precision Metals, Inc. v. The Metal Ctr., Inc. (In re The Meter Ctr., Inc.)*, 31 B.R. 458, 461 (Bankr. D. Conn. 1983) ("The options presented by the parties are sever and remand [plaintiff's] claim against [non-debtor], so that [plaintiff] may continue its state court action against [non-debtor] or retain the entire proceeding in this court, so that the rights and obligations of all parties can be litigated together.").<sup>12</sup>

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<sup>11</sup> 555 F. Supp. 2d 328 (N.D.N.Y. 2008).

<sup>12</sup> See also *Symantec Corp. v. Logical Plus, Inc.*, No. C 06-7963, 2009 WL 2905930, at \*1 (N.D. Cal. Sept. 8, 2009) ("The Court ordered the Clerk to administratively close this case until the bankruptcy stay was lifted. The Court's order also stated that if any party contended that the case could proceed against the non-bankrupt defendants, that party could file a motion to sever and partially lift the stay.").

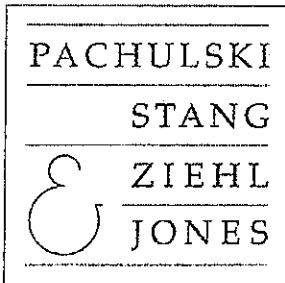


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Finally, like your previous letter, the February 5 letter misconstrues the law concerning whether the Lehman Debtors' contract rights constitute property of their estates that are protected by the automatic stay. As we have informed you on a number of occasions, under governing Second Circuit law, the Lehman Debtors' contract rights are property of their estates – a point that you now acknowledge – and are subject to the automatic stay. The cases cited in the February 5 letter do not compel a contrary conclusion, for they are inapposite, wholly unpersuasive, and do not represent Second Circuit law.

The Second Circuit has made it clear that “where a non-debtor’s action with respect to an interest that is intertwined with that of a bankrupt debtor would have the legal effect of diminishing or eliminating property of the bankrupt estate, such action is barred by the automatic stay.” *Official Comm. of Unsecured Creditors v. PSS S.S. Co. (In re Prudential Lines, Inc.)*, 928 F.2d 565, 574 (2d Cir. 1991) (automatic stay prevented non-debtor from taking worthless stock deduction on its 1998 tax return because it “would have an adverse impact” on debtor’s ability to carryforward its net operating loss, which was property of the debtor’s estate); *see also 48th St. Steakhouse, Inc. v. Rockefeller Group, Inc. (In re 48th St. Steakhouse, Inc.)*, 835 F.2d 427 (2d Cir. 1987) (automatic stay prevented landlord from terminating prime lease with non-debtor because that action “would inevitably have an adverse impact” on the debtor’s sublease, which was property of the debtor’s estate).<sup>13</sup> Here, the automatic stay

<sup>13</sup> The Second Circuit cases cited in the February 5 letter simply do not support your position. *Turner v. Lee (In re Minton)*, 46 B.R. 222, 224-25 (S.D.N.Y. 1985), held that a partner’s statutory interest in partnership property as a “tenant in partnership” did not constitute property of the partner’s estate because the rights of a tenant in partnership are “quite limited”; a tenant in partnership cannot, for example, “possess partnership property for any purpose other than those of the partnership” or “be assigned by the partner individually.” These factors simply are not present here. In fact, you have admitted that (i) if LCPI had a right to repurchase the transferred loans and (ii) such right had not been terminated – both of which are true – *that such contract right would constitute property of LCPI’s estate*. See February 5 Letter at 5. Similarly, *Roslyn Savings Bank v. Comcoach Corp. (In re Comcoach Corp.)*, 698 F.2d 571 (2d Cir. 1983), is inapposite because, in that case, the bank’s failure to name the debtor, a necessary party



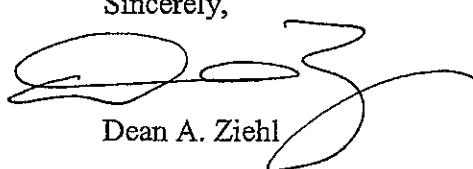
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applies because, *inter alia*, the equitable subordination action and the other affirmative relief sought by the SunCal Debtors would adversely impact the Lehman Debtors' contract rights.

To avoid any misunderstanding, while it is not useful to engage in a point-by-point discussion of all the arguments raised in the February 5 letter, you should not interpret that to mean we agree with any of your arguments. Our position is clear. The BAP has held the SunCal Debtors' equitable subordination action violates LCPI's automatic stay, and nothing in your letters justifies the SunCal Debtors' continued violation of the Lehman Debtors' automatic stay. The SunCal Debtors must stop this continuing violation and comply with the BAP's opinion.

Sincerely,

  
Dean A. Ziehl

DAZ

cc: Via E-Mail  
Lei Lei Wang Ekvall, Esq.  
Alan J Friedman, Esq.

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to the underlying foreclosure action, meant that, as a matter of law, the "foreclosure action simply leaves such party's *rights to the premises unaffected.*" 698 F.2d at 574 (emphasis added). In contrast, the equitable subordination action would adversely impact the Lehman Debtors' contract rights.

## **EXHIBIT “5”**

**\$65,000,000.00 TERM LOAN**

**AND**

**\$25,000,000.00  
REVOLVING LINE OF CREDIT**

by

**LEHMAN ALI INC.**  
individually and as Agent

and

**LEHMAN ALI INC.**  
as Lender and such other Lenders which may become  
Lenders from time to time pursuant to this Agreement  
(collectively, the "Lenders")

to

**SUNCAL PSV, LLC, a Delaware limited liability company**  
**("Borrower")**

February 12, 2007

(b) Documents Taken as a Whole. The words "hereof," "herein," "hereunder," "hereto" and similar terms in this Agreement or any other Loan Document refer to this Agreement or such other Loan Document as a whole and not to any particular provision of this Agreement or such other Loan Document.

(c) Headings. The section and other headings contained in this Agreement or the other Loan Documents and the Table of Contents (if any) preceding this Agreement or the other Loan Documents are for reference purposes only and shall not control or affect the construction of this Agreement or the other Loan Documents or the interpretation thereof in any respect.

(d) Implied References to This Agreement. Section, subsection, clause, schedule and exhibit references are to this Agreement unless otherwise specified.

(e) Persons. Reference to any Person includes such Person's successors and assigns but, if applicable, only if such successors and assigns are permitted by this Agreement or the other Loan Documents, as the case may be.

(f) Modifications to Documents. Reference to any agreement (including this Agreement and any other Loan Document together with the schedules and exhibits hereto or thereto), document or instrument means such agreement, document or instrument as amended, modified, replaced, substituted for, superseded or restated.

(g) Accounting Terms. For purposes of this Agreement, all accounting terms not otherwise defined herein shall have the meanings assigned to them in conformity with GAAP.

## 2. LOAN FACILITY.

### 2.1 Loan Facility.

2.1.1 Term Loan. In reliance upon the representations and warranties of the Loan Parties, and subject to the terms and conditions of this Agreement and the Loan Documents, each Lender severally (and not jointly) hereby agrees to lend to or for the benefit of Borrower such Lender's Pro Rata Share of the Term Loan Commitment Amount, and Borrower agrees to pay all outstanding Obligations relating to the Term Loan evidenced and secured by the Loan Documents, in the manner and upon the terms and conditions expressed in the Loan Documents. The Advance of the Term Loan made hereunder shall consist of loans made from the several Lenders ratably in proportion to their respective Pro Rata Shares. The Term Loan may from time to time be a LIBOR Loan or a Base Rate Loan, as determined by Borrower and notified to Agent in accordance with Section 2.1.6(h).

2.1.2 Revolving Loan. In reliance upon the representations and warranties of the Loan Parties, and subject to the terms and conditions of this Agreement and the Loan Documents, each Lender severally (and not jointly) hereby agrees to lend to or for the benefit of Borrower such Lender's Pro Rata Share of the Revolving Loan Commitment Amount, and Borrower agrees to pay all outstanding Obligations relating to the Revolving Loan evidenced and secured by the Loan Documents, in the manner and upon the terms and conditions expressed in

the Loan Documents. Each Advance of the Revolving Loan made hereunder shall consist of loans made from the several Lenders ratably in proportion to their respective Pro Rata Shares. The Revolving Loan may from time to time be LIBOR Loans or Base Rate Loans, as determined by Borrower and notified to Agent in accordance with Sections 2.1.6(h) or 2.3.3, provided that no Revolving Loan shall be made as a LIBOR Loan after the day that is one month prior to the Maturity Date.

(a) Revolving Loan Commitment Amount; Limitations and Reduction.

(i) Notwithstanding anything to the contrary set forth elsewhere herein or in any other Loan Document, the Revolving Loan Commitment Amount may be reduced from time to time pursuant to the terms of Section 2.2.

(ii) Notwithstanding anything to the contrary set forth elsewhere herein or in any other Loan Document, upon the occurrence of an Event of Default or an Unmatured Event of Default, no further Advances will be available under the Revolving Loan.

Each of the foregoing reductions in the Commitment Amount shall occur automatically and without further notice or action by Agent or any Lender on the dates set forth above.

2.1.3 Nature of the Loan.

(a) Subject to and upon the terms and conditions set forth herein, the Lenders hereby agree to make and Borrower hereby agrees to accept the Advance of the Term Loan on the Closing Date and each Advance of the Revolving Loan made on the Closing Date or thereafter.

(b) Borrower may request and receive only one Advance under the Term Loan and any amount borrowed and repaid hereunder in respect of the Term Loan may not be reborrowed.

(c) Subject to the limitations described in this Agreement, the Revolving Loan shall constitute a revolving line of credit and advances repaid may be reborrowed on a revolving basis. Although the outstanding principal of the Loan may be zero from time to time, the Loan Documents will remain in full force and effect until all obligations of Agent and the Lenders pursuant to this Agreement and the Loan Documents expire and all Obligations are paid and performed in full and the Commitment Amount has been reduced to zero. Upon the occurrence of an Event of Default or an Unmatured Event of Default, Agent (with the consent of the Required Lenders) may cause or declare any commitment of the Lenders to make Advances to be suspended or terminated, whereupon any obligation to make further Advances will immediately be suspended or terminated and the Commitment Amount shall be reduced to zero.

## **EXHIBIT “6”**

SECOND AMENDED AND RESTATED  
TERM LOAN AND REVOLVING LINE OF CREDIT  
LOAN AGREEMENT

\$296,061,300.00 TERM LOAN

AND  
\$20,000,000.00  
REVOLVING LINE OF CREDIT LOAN

BY

LEHMAN ALI INC.  
individually and as Agent

and

LEHMAN ALI INC.  
as Lender and such other Lenders which may become  
Lenders from time to time pursuant to this Agreement

(collectively, the "Lenders")

to

SUNCAL MARBLEHEAD HEARTLAND MASTER LLC,  
a Delaware limited liability company

AND

SUNCAL MARBLEHEAD LLC,  
a Delaware limited liability company

AND

SUNCAL HEARTLAND LLC,  
a Delaware limited liability company

(collectively and individually  
jointly and severally "Borrower")

October 3, 2007

(e) Persons. Reference to any Person includes such Person's successors and assigns but, if applicable, only if such successors and assigns are permitted by this Agreement or the other Loan Documents, as the case may be.

(f) Modifications to Documents. Reference to any agreement (including this Agreement and any other Loan Document together with the schedules and exhibits hereto or thereto), document or instrument means such agreement, document or instrument as amended, modified, replaced, substituted for, superseded or restated.

(g) Accounting Terms. For purposes of this Agreement, all accounting terms not otherwise defined herein shall have the meanings assigned to them in conformity with GAAP.

## 2. LOAN FACILITY.

### 2.1 Loan Facility.

2.1.1 Term Loan. In reliance upon the representations and warranties of the Loan Parties, and subject to the terms and conditions of this Agreement and the Loan Documents, each Lender severally (and not jointly) hereby agrees to lend to or for the benefit of Borrower such Lender's Pro Rata Share of the Term Loan Commitment Amount, and Borrower agrees to pay all outstanding Obligations relating to the Term Loan evidenced and secured by the Loan Documents, in the manner and upon the terms and conditions expressed in the Loan Documents. The Advances of the Term Loan made hereunder shall consist of loans made from the several Lenders ratably in proportion to their respective Pro Rata Shares. The Term Loan may from time to time be a LIBOR Loan or a Base Rate Loan, as determined by Borrower and notified to Agent in accordance with Section 2.1.6(h).

### 2.1.2 Revolving Loan.

(a) Revolving Loan. In reliance upon the representations and warranties of the Loan Parties and subject to the terms and conditions of this Agreement and the Loan Documents, each Lender severally (and not jointly) hereby agrees to lend to or for the benefit of Borrower such Lender's Pro Rata Share of the Revolving Loan Commitment Amount, and Borrower agrees to pay all outstanding Obligations relating to the Revolving Loan evidenced and secured by the Loan Documents, in the manner and upon the terms and conditions expressed in the Loan Documents. Each Advance of the Revolving Loan made hereunder shall consist of loans made from the several Lenders ratably in proportion to their respective Pro Rata Shares. The Revolving Loan may from time to time be LIBOR Loans or Base Rate Loans, as determined by Borrower and notified to Agent in accordance with Sections 2.1.6(h) or 2.3.3, provided that no Revolving Loan shall be made as a LIBOR Loan after the date that is one month prior to the Maturity Date.

### (b) Revolving Loan Commitment Amount: Limitations and Reductions.

(i) Notwithstanding anything to the contrary set forth elsewhere herein or in any other Loan Document, the Revolving Loan Commitment Amount may be reduced from time to time pursuant to the terms of Section 2.2.

(ii) Notwithstanding anything to the contrary set forth elsewhere herein or in any other Loan Document, upon the occurrence of an Event of Default or an Unmatured Event of Default, no further Advances will be available under the Revolving Loan Facility.

Each of the foregoing reductions in the Revolving Loan Commitment Amount shall occur automatically and without further notice or action by Agent or any Lender on the dates set forth above.

2.1.3 Nature of the Loan.

(a) Subject to and upon the terms and conditions set forth herein, the Lenders have made and Borrower has accepted each Advance of the Term Loan on or prior to the Closing Date and each Advance of the Revolving Loan made on the Closing Date or thereafter.

(b) As of the Closing Date, the Term Loan has been fully advanced to Borrower. Notwithstanding any provision to the contrary in this Agreement or any other Loan Document, any amount borrowed and repaid hereunder in respect of the Term Loan may not be reborrowed.

(c) Subject to the limitations described in this Agreement, the Revolving Loan shall constitute a revolving line of credit and advances repaid may be reborrowed on a revolving basis. Although the outstanding principal of the Loan may be zero from time to time, the Loan Documents will remain in full force and effect until all obligations of Agent and the Lenders pursuant to this Agreement and the Loan Documents expire and all Obligations are paid and performed in full and the Commitment Amount has been reduced to zero. Upon the occurrence of an Event of Default or an Unmatured Event of Default, Agent (with the consent of the Required Lenders) may cause or declare any commitment of the Lenders to make Advances to be suspended or terminated, whereupon any obligation to make further Advances will immediately be suspended or terminated and the Commitment Amount shall be reduced to zero.

2.1.4 Evidence of Loan; Outstanding Loan Borrowings; Other Amounts. The Loan is and shall be evidenced by the Note and shall bear interest calculated and payable as provided in this Section 2.

(a) Agent and each Lender will maintain an account of the Loan as follows:

(i) Each Lender will maintain in accordance with its usual practice an account or accounts evidencing the Obligations due such Lender

## **EXHIBIT “7”**

**\$90,000,000.00 TERM LOAN**

**AND**

**\$30,000,000.00  
REVOLVING LINE OF CREDIT**

**BY**

**LEHMAN ALI INC.  
individually and as Agent**

**and**

**LEHMAN ALI INC.  
as Lender and such other Lenders which may become  
Lenders from time to time pursuant to this Agreement**

**(collectively, the "Lenders")**

**to**

**LB/L – SUNCAL OAK VALLEY LLC, a Delaware limited liability company**

**("Borrower")**

**May 23, 2006**

(b) Documents Taken as a Whole. The words "hereof," "herein," "hereunder," "hereto" and similar terms in this Agreement or any other Loan Document refer to this Agreement or such other Loan Document as a whole and not to any particular provision of this Agreement or such other Loan Document.

(c) Headings. The section and other headings contained in this Agreement or the other Loan Documents and the Table of Contents (if any) preceding this Agreement or the other Loan Documents are for reference purposes only and shall not control or affect the construction of this Agreement or the other Loan Documents or the interpretation thereof in any respect.

(d) Implied References to This Agreement. Article, section, subsection, clause, schedule and exhibit references are to this Agreement unless otherwise specified.

(e) Persons. Reference to any Person includes such Person's successors and assigns but, if applicable, only if such successors and assigns are permitted by this Agreement or the other Loan Documents, as the case may be.

(f) Modifications to Documents. Reference to any agreement (including this Agreement and any other Loan Document together with the schedules and exhibits hereto or thereto), document or instrument means such agreement, document or instrument as amended, modified, replaced, substituted for, superseded or restated.

(g) Accounting Terms. For purposes of this Agreement, all accounting terms not otherwise defined herein shall have the meanings assigned to them in conformity with GAAP.

## 2. LOAN FACILITY.

### 2.1 Loan Facility.

2.1.1 Term Loan. In reliance upon the representations and warranties of the Loan Parties, and subject to the terms and conditions of this Agreement and the Loan Documents, each Lender severally (and not jointly) hereby agrees to lend to or for the benefit of Borrower such Lender's Pro Rata Share of the Term Loan Commitment Amount, and Borrower agrees to pay all outstanding Obligations relating to the Term Loan evidenced and secured by the Loan Documents, in the manner and upon the terms and conditions expressed in the Loan Documents. The Advance of the Term Loan made hereunder shall consist of loans made from the several Lenders ratably in proportion to their respective Pro Rata Shares. The Term Loan may from time to time be a LIBOR Loan or a Base Rate Loan, as determined by Borrower and notified to Agent in accordance with Section 2.1.6(h).

2.1.2 Revolving Loan. In reliance upon the representations and warranties of the Loan Parties, and subject to the terms and conditions of this Agreement and the Loan Documents, each Lender severally (and not jointly) hereby agrees to lend to or for the benefit of Borrower such Lender's Pro Rata Share of the Revolving Loan Commitment Amount, and Borrower agrees to pay all outstanding Obligations relating to the Revolving Loan evidenced and

secured by the Loan Documents, in the manner and upon the terms and conditions expressed in the Loan Documents. Each Advance of the Revolving Loan made hereunder shall consist of loans made from the several Lenders ratably in proportion to their respective Pro Rata Shares. The Revolving Loan may from time to time be LIBOR Loans or Base Rate Loans, as determined by Borrower and notified to Agent in accordance with Sections 2.1.6(h) or 2.3.3, provided that no Revolving Loan shall be made as a LIBOR Loan after the day that is one month prior to the Maturity Date.

(a) Revolving Loan Commitment Amount; Limitations and Reduction.

(i) Notwithstanding anything to the contrary set forth elsewhere herein or in any other Loan Document, the Revolving Loan Commitment Amount may be reduced from time to time pursuant to the terms of Section 2.2.

(ii) Notwithstanding anything to the contrary set forth elsewhere herein or in any other Loan Document, upon the occurrence of an Event of Default or an Unmatured Event of Default, no further Advances will be available under the Revolving Loan.

Each of the foregoing reductions in the Commitment Amount shall occur automatically and without further notice or action by Agent or any Lender on the dates set forth above.

2.1.3 Nature of the Loan.

(a) Subject to and upon the terms and conditions set forth herein, the Lenders hereby agree to make and Borrower hereby agrees to accept the Advance of the Term Loan on the Closing Date and each Advance of the Revolving Loan made on the Closing Date or thereafter.

(b) Borrower may request and receive only one Advance under the Term Loan and any amount borrowed and repaid hereunder in respect of the Term Loan may not be reborrowed.

(c) Subject to the limitations described in this Agreement, the Revolving Loan shall constitute a revolving line of credit and advances repaid may be reborrowed on a revolving basis. Although the outstanding principal of the Loan may be zero from time to time, the Loan Documents will remain in full force and effect until all obligations of Agent and the Lenders pursuant to this Agreement and the Loan Documents expire and all Obligations are paid and performed in full and the Commitment Amount has been reduced to zero. Upon the occurrence of an Event of Default or an Unmatured Event of Default, Agent (with the consent of the Required Lenders) may cause or declare any commitment of the Lenders to make Advances to be suspended or terminated, whereupon any obligation to make further Advances will immediately be suspended or terminated and the Commitment Amount shall be reduced to zero.

2.1.4 Evidence of Loan; Outstanding Loan Borrowings; Other Amounts. The Loan is and shall be evidenced by the Note and shall bear interest calculated and payable as

## **EXHIBIT “8”**

EXECUTION VERSION

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**\$68,500,000 TERM LOAN**

and

**\$31,500,000 REVOLVING LINE OF CREDIT**

by

**LEHMAN ALI INC.,**  
individually and as Agent,

and

**LEHMAN ALI INC.,**  
as Lender and such other Lenders which may become  
Lenders from time to time pursuant to this Agreement  
(collectively, the "Lenders"),

to

**LB/L – SUNCAL NORTHLAKE LLC,**  
a Delaware limited liability company  
("Borrower")

September 9, 2005

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1.2 Other Terms. Other terms defined herein shall have the meaning ascribed to them herein.

1.2.1 Interpretation. Unless the context of this Agreement otherwise clearly requires, the following rules of construction shall apply to this Agreement and each of the other Loan Documents:

(a) Number; Inclusion. References to the plural include the singular, the plural, the part and the whole; "or" has the inclusive meaning represented by the phrase "and/or"; and "including" has the meaning represented by the phrase "including without limitation."

(b) Documents Taken as a Whole. The words "hereof," "herein," "hereunder," "hereto" and similar terms in this Agreement or any other Loan Document refer to this Agreement or such other Loan Document as a whole and not to any particular provision of this Agreement or such other Loan Document.

(c) Headings. The section and other headings contained in this Agreement or the other Loan Documents and the Table of Contents (if any) preceding this Agreement or the other Loan Documents are for reference purposes only and shall not control or affect the construction of this Agreement or the other Loan Documents or the interpretation thereof in any respect.

(d) Implied References to This Agreement. Article, section, subsection, clause, schedule and exhibit references are to this Agreement unless otherwise specified.

(e) Persons. Reference to any Person includes such Person's successors and assigns but, if applicable, only if such successors and assigns are permitted by this Agreement or the other Loan Documents, as the case may be.

(f) Modifications to Documents. Reference to any agreement (including this Agreement and any other Loan Document together with the schedules and exhibits hereto or thereto), document or instrument means such agreement, document or instrument as amended, modified, replaced, substituted for, superseded or restated.

(g) Accounting Terms. For purposes of this Agreement, all accounting terms not otherwise defined herein shall have the meanings assigned to them in conformity with GAAP.

## 2. LOAN FACILITY.

### 2.1 Loan Facility.

2.1.1 Term Loan. In reliance upon the representations and warranties of the Loan Parties, and subject to the terms and conditions of this Agreement and the Loan Documents, each Lender severally (and not jointly) hereby agrees to lend to or for the benefit of Borrower such Lender's Pro Rata Share of the Term Loan Commitment Amount, and Borrower

agrees to pay all outstanding Obligations relating to the Term Loan evidenced and secured by the Loan Documents, in the manner and upon the terms and conditions expressed in the Loan Documents. The Advance of the Term Loan made hereunder shall consist of loans made from the several Lenders ratably in proportion to their respective Pro Rata Shares.

**2.1.2 Revolving Loan.** In reliance upon the representations and warranties of the Loan Parties, and subject to the terms and conditions of this Agreement and the Loan Documents, each Lender severally (and not jointly) hereby agrees to lend to or for the benefit of Borrower such Lender's Pro Rata Share of the Revolving Loan Commitment Amount, and Borrower agrees to pay all outstanding Obligations relating to the Revolving Loan evidenced and secured by the Loan Documents, in the manner and upon the terms and conditions expressed in the Loan Documents. Each Advance of the Revolving Loan made hereunder shall consist of loans made from the several Lenders ratably in proportion to their respective Pro Rata Shares.

**2.1.3 Nature of the Loan.**

(a) Subject to and upon the terms and conditions set forth herein, the Lenders hereby agree to make and Borrower hereby agrees to accept the Advances of the Loan on the Closing Date and each Advance of the Loan made thereafter.

(b) Borrower may request and receive only one Advance under the Term Loan and any amount borrowed and repaid hereunder in respect of the Term Loan may not be reborrowed.

(c) Subject to the limitations described in this Agreement, the Revolving Loan shall constitute a revolving line of credit and advances repaid may be reborrowed on a revolving basis. Although the outstanding principal of the Loan may be zero from time to time, the Loan Documents will remain in full force and effect until all obligations of the Agent and the Lenders pursuant to this Agreement and the Loan Documents expire and all Obligations are paid and performed in full and the Commitment Amount has been reduced to zero. Upon the occurrence of an Event of Default or an Unmatured Event of Default, Agent (with the consent of the Required Lenders) may cause or declare any commitment of the Lenders to make Advances to be suspended or terminated, whereupon any obligation to make further Advances will immediately be suspended or terminated and the Commitment Amount shall be reduced to zero.

**2.1.4 Lenders Authorized to Advance for Interest, Fees and Expenses.** Borrower hereby authorizes the Lenders to make Advances (without requisition by Borrower) to pay interest fees and expenses due and payable under the Loan Documents as and when the same are due and payable. Notwithstanding anything to the contrary contained in this Agreement, the Agent and the Lenders shall have no obligation to make any such Advances (i) when and to the extent that Agent, in its sole judgment, determines that the Property is generating, on a cash basis, positive cash flow in excess of Borrower's other usual, reasonable and customary expenses (including interest expense) relating to the Property or (ii) if a Default or Event of Default shall exist.

## **EXHIBIT “9”**

EXECUTION VERSION

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CREDIT AGREEMENT

among

PALMDALE HILLS PROPERTY, LLC,  
as Borrower,

The Several Lenders  
from Time to Time Parties Hereto,

LEHMAN BROTHERS INC.,  
as Arranger

LEHMAN COMMERCIAL PAPER INC.,  
as Syndication Agent

and

LEHMAN COMMERCIAL PAPER INC.,  
as Administrative Agent

Dated as of February 8, 2007

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(e) All calculations of financial ratios set forth in Section 7.1 shall be calculated to the same number of decimal places as the relevant ratios are expressed in and shall be rounded upward if the number in the decimal place immediately following the last calculated decimal place is five or greater. For example, if the relevant ratio is to be calculated to the hundredth decimal place and the calculation of the ratio is 5.126, the ratio will be rounded up to 5.13.

## SECTION 2. AMOUNT AND TERMS OF COMMITMENTS

2.1 Term Loan Commitments. Subject to the terms and conditions hereof, the Lenders severally agree to make term loans (each, a "Term Loan") to the Borrower on the Closing Date in an amount for each Lender not to exceed the amount of the Term Loan Commitment of such Lender. The Term Loans may from time to time be Eurodollar Loans or Base Rate Loans, as determined by the Borrower and notified to the Administrative Agent in accordance with Sections 2.2 and 2.11.

2.2 Procedure for Term Loan Borrowing. (a) The Borrower shall deliver to the Administrative Agent a Borrowing Notice (which Borrowing Notice must be received by the Administrative Agent prior to 10:00 A.M. (New York City time) one Business Day prior to the anticipated Closing Date) requesting that the Term Loan Lenders make the Term Loans on the Closing Date. Upon receipt of such Borrowing Notice the Administrative Agent shall promptly notify each Term Loan Lender thereof. Not later than 12:00 Noon (New York City time) on the Closing Date each Term Loan Lender shall make available to the Administrative Agent at the Funding Office an amount in immediately available funds equal to the Term Loan or Term Loans to be made by such Lender. The Administrative Agent shall make available to the Borrower the aggregate of the amounts made available to the Administrative Agent by the Term Loan Lenders, in like funds as received by the Administrative Agent in accordance with Section 2.2(b).

(b) The Term Loans made available to the Borrower on the Closing Date shall be distributed as follows: (i) \$166,743,545.13 shall be used to refinance the Existing Credit Facility, (ii) \$20,000,000 shall be deposited into the Development Account, (iii) to pay fees and expenses in connection with the transactions contemplated hereunder and (iv) to reimburse and pay development costs and expenses paid or incurred prior to the Closing Date, such costs and expenses to be pre-approved by the Administrative Agent in its sole discretion.

2.3 Repayment of Term Loans. The Term Loan of each Lender shall mature in fifteen consecutive quarterly installments, commencing on June 30, 2007, each of which shall be in an amount equal to such Lender's Term Loan Percentage multiplied by the percentage set forth below opposite such installment of the aggregate principal amount of Term Loans made on the Closing Date:

Installment	Percentage
June 30, 2007 .....	0.25%
September 30, 2007 .....	0.25%
December 31, 2007 .....	0.25%
March 31, 2008 .....	0.25%

Installment	Percentage
June 30, 2008 .....	0.25%
September 30, 2008 .....	0.25%
December 31, 2008 .....	0.25%
March 31, 2009 .....	0.25%
June 30, 2009 .....	0.25%
September 30, 2009 .....	0.25%
December 31, 2009 .....	0.25%
March 31, 2010 .....	0.25%
June 30, 2010 .....	0.25%
September 30, 2010 .....	0.25%
Term Loan Maturity Date .....	All amounts outstanding in respect of Term Loans

**2.4 Revolving Credit Commitments.** (a) Subject to the terms and conditions hereof, the Revolving Credit Lenders severally agree to make revolving credit loans ("Revolving Credit Loans") to the Borrower from time to time during the Revolving Credit Commitment Period (but not more frequently than once per month) in an aggregate principal amount at any one time outstanding for each Revolving Credit Lender which, when added to such Lender's Revolving Credit Loans then outstanding, does not exceed the amount of such Lender's Revolving Credit Commitment; provided, that the Borrower may not borrow any Revolving Credit Loans if, after giving effect to any disbursements from the Development Account requested to be made on such date by the Borrower in accordance with Section 5.3, the amount on deposit in the Development Account exceeds \$20,000,000. During the Revolving Credit Commitment Period the Borrower may use the Revolving Credit Commitments by borrowing, prepaying the Revolving Credit Loans in whole or in part, and reborrowing, all in accordance with the terms and conditions hereof. The Revolving Credit Loans may from time to time be Eurodollar Loans or Base Rate Loans, as determined by the Borrower and notified to the Administrative Agent in accordance with Sections 2.5 and 2.11, provided that no Revolving Credit Loan shall be made as a Eurodollar Loan after the day that is one month prior to the Revolving Credit Termination Date.

(b) The Borrower shall repay all outstanding Revolving Credit Loans on the Revolving Credit Termination Date.

**2.5 Procedure for Revolving Credit Borrowing.** The Borrower may borrow under the Revolving Credit Commitments on any Business Day during the Revolving Credit Commitment Period, provided that the Borrower shall deliver to the Administrative Agent a Borrowing Notice (which Borrowing Notice must be received by the Administrative Agent prior to 12:00 Noon (New York City time) (a) three Business Days prior to the requested Borrowing Date, in the case of Eurodollar Loans, or (b) one Business Day prior to the requested Borrowing Date, in the case of Base Rate Loans). Each borrowing of Revolving Credit Loans under the Revolving Credit Commitments shall be in an amount equal to (x) in the case of Base Rate Loans, \$1,000,000 or a whole multiple thereof (or, if the then aggregate Available Revolving Credit Commitments are less than \$1,000,000, such lesser amount) and (y) in the case of Eurodollar Loans, \$3,000,000 or a whole multiple of \$1,000,000 in excess thereof. Upon receipt

of any such Borrowing Notice from the Borrower, the Administrative Agent shall promptly notify each Revolving Credit Lender thereof. Each Revolving Credit Lender will make its Revolving Credit Percentage of the amount of each borrowing of Revolving Credit Loans available to the Administrative Agent for the account of the Borrower at the Funding Office prior to 12:00 Noon (New York City time) on the Borrowing Date requested by the Borrower in funds immediately available to the Administrative Agent. Such borrowing will then be made available to the Borrower by the Administrative Agent in like funds as received by the Administrative Agent, by depositing the same to the Operating Account.

2.6 Repayment of Loans; Evidence of Debt. (a) The Borrower hereby unconditionally promises to pay to the Administrative Agent for the account of the appropriate Revolving Credit Lender or Term Loan Lender, as the case may be, (i) the then unpaid principal amount of each Revolving Credit Loan of such Revolving Credit Lender on the Revolving Credit Termination Date (or on such earlier date on which the Loans become due and payable pursuant to Section 8) and (ii) the principal amount of each Term Loan of such Term Loan Lender in installments according to the amortization schedule set forth in Section 2.3 (or on such earlier date on which the Loans become due and payable pursuant to Section 8). The Borrower hereby further agrees to pay interest on the unpaid principal amount of the Loans from time to time outstanding from the date hereof until payment in full thereof at the rates per annum, and on the dates, set forth in Section 2.13.

(b) Each Lender shall maintain in accordance with its usual practice an account or accounts evidencing indebtedness of the Borrower to such Lender resulting from each Loan of such Lender from time to time, including the amounts of principal and interest payable and paid to such Lender from time to time under this Agreement.

(c) The Administrative Agent, on behalf of the Borrower, shall maintain the Register pursuant to Section 10.6(d), and a subaccount therein for each Lender, in which shall be recorded (i) the amount of each Loan made hereunder and any Note evidencing such Loan, the Type of such Loan and each Interest Period applicable thereto, (ii) the amount of any principal or interest due and payable or to become due and payable from the Borrower to each Lender hereunder and (iii) both the amount of any sum received by the Administrative Agent hereunder from the Borrower and each Lender's share thereof.

(d) The entries made in the Register and the accounts of each Lender maintained pursuant to Section 2.6(b) shall, to the extent permitted by applicable law, be prima facie evidence of the existence and amounts of the obligations of the Borrower therein recorded; provided, however, that the failure of any Lender or the Administrative Agent to maintain the Register or any such account, or any error therein, shall not in any manner affect the obligation of the Borrower to repay (with applicable interest) the Loans made to the Borrower by such Lender in accordance with the terms of this Agreement.

(e) The Borrower agrees that, upon the request to the Administrative Agent by any Lender, the Borrower will promptly execute and deliver to such Lender a promissory note of the Borrower evidencing any Term Loans or Revolving Credit Loans, as the case may be, of such Lender, substantially in the forms of Exhibit G-1 or G-2, respectively (a "Term Note" or "Revolving Credit Note", respectively), with appropriate insertions as to date and principal

## **EXHIBIT “10”**

1 PAUL J. COUCHOT - State Bar No. 131934  
2 SEAN A. OKEEFE – State Bar No. 122417  
3 **WINTHROP COUCHOT**  
4 **PROFESSIONAL CORPORATION**  
5 660 Newport Center Drive, Fourth Floor  
6 Newport Beach, CA 92660  
7 Telephone: (949) 720-4100  
8 Facsimile: (949) 720-4111  
9 General Insolvency Counsel for  
10 Within Specified Administratively Consolidated  
11 Debtors-in-Possession and  
12 Counsel for SCC Acquisitions, Inc.  
13 LOUIS R. MILLER, State Bar No. 54141  
14 MARTIN PRITIKIN, State Bar. No. 210845  
15 **MILLER BARONDESS, LLP**  
16 1999 Avenue of the Stars, Suite 1000  
17 Los Angeles, California 90067  
18 Telephone: (310) 552-4400  
19 Facsimile: (310) 552-8400  
20 Special Litigation Counsel to Administratively  
21 Consolidated Debtors-in-Possession and to  
22 Chapter 11 Trustee for Within Specified Debtors

13 **UNITED STATES BANKRUPTCY COURT**  
14 **CENTRAL DISTRICT OF CALIFORNIA**  
15 **SANTA ANA DIVISION**

16 In re  
17 PALMDALE HILLS PROPERTY, AND ITS  
18 RELATED DEBTORS,  
19 Jointly Administered Debtors  
20 and Debtors-in-Possession

21 Affects:

22  All Debtors  
23  Palmdale Hills Property,  
24  SunCal Beaumont Heights, LLC  
25  SCC Palmdale,  
26  SunCal Johannson Ranch, LLC  
27  SunCal Summit Valley, LLC  
28  SunCal Emerald Meadows LLC

*Caption Continued on Next Page*

Case No. 8:08-bk-17206-ES

Jointly Administered With Case Nos.  
8:08-bk-17209-ES; 8:08-bk-17240-ES;  
8:08-bk-17224-ES; 8:08-bk-17242-ES;  
8:08-bk-17225-ES; 8:08-bk-17245-ES;  
8:08-bk-17227-ES; 8:08-bk-17246-ES;  
8:08-bk-17230-ES; 8:08-bk-17231-ES;  
8:08-bk-17236-ES; 8:08-bk-17248-ES;  
8:08-bk-17249-ES; 8:08-bk-17573-ES;  
8:08-bk-17574 ES; 8:08-bk-17575-ES;  
8:08-bk-17404-ES; 8:08-bk-17407-ES;  
8:08-bk-17408-ES; 8:08-bk-17409-ES;  
8:08-bk-17458-ES; 8:08-bk-17465-ES;  
8:08-bk-17470-ES; 8:08-bk-17472-ES;  
and 8:08-bk-17588-ES

Chapter 11 Proceedings

25 **DECLARATION OF SEAN A. OKEEFE**  
26 **IN SUPPORT OF DEBTORS'**  
27 **OBJECTIONS TO AND MOTION FOR**  
28 **ORDER STRIKING CLAIMS FILED BY**  
THE LEHMAN ENTITIES

DATE: June 30, 2009  
TIME: 2:00 p.m.  
PLACE: Courtroom 5A

*Continued from Previous Page*

- SunCal Bickford Ranch, LLC
  - Acton Estates, LLC
  - Seven Brothers LLC
  - SJD Partners, Ltd.
  - SJD Development Corp.
  - Kirby Estates, LLC
  - SunCal Communities I, LLC
  - SunCal Communities III, LLC
  - SCC Communities LLC
  - North Orange Del Rio Land, LLC
  - Tesoro SF LLC
  - LBL-SunCal Oak Valley, LLC
  - SunCal Heartland, LLC
  - LBL-SunCal Northlake, LLC
  - SunCal Marblehead, LLC
  - SunCal Century City, LLC
  - SunCal PSV, LLC
  - Delta Coves Venture, LLC
  - SunCal Torrance, LLC
  - SunCal Oak Knoll, LLC

**DECLARATION OF SEAN A. O'KEEFE**

I, Sean A. O'Keefe, hereby declare and state as follows:

3           1. I am a member of the bar of California and I am associated with the law firm of  
4 Winthrop Couchot, P.C. (the "Firm").

5        2.      The Firm is general insolvency counsel to following Chapter 11 debtors Palmdale  
6 Hills, LLC (“Palmdale Hills”), SunCal Communities I, LLC (“SunCal I”), SunCal Communities  
7 III, LLC (“SunCal III”), SCC/Palmdale, LLC (“SCC/Palmdale”), Acton Estates, LLC (“Acton”),  
8 SunCal Beaumont, LLC (“Beaumont”), SunCal Emerald Meadows, LLC (“Emerald Meadows”),  
9 SunCal Johansson Ranch, LLC (“Johansson Ranch”), SunCal Bickford Ranch, LLC (“Bickford  
10 Ranch”), SunCal Summit Valley, LLC (“Summit Valley”), Seven Brothers, LLC (“Seven  
11 Brothers”), Kirby Estates, LLC (“Kirby Estates”), SJD Partners, Ltd., a California limited  
12 partnership (“SJD Partners”), and SJD Development Corp., a California corporation (“SJD Corp”)  
13 (collectively the “Voluntary Debtors”).

14       3.      The Voluntary Debtors cases are being jointly administered with the pending  
15 Chapter 11 cases of the following debtors: Delta Coves Ventures, LLC (“Delta Coves”), SunCal  
16 Heartland, LLC (“SunCal Heartland”). SunCal Marblehead, LLC (“SunCal Marblehead”), LB-L-  
17 SunCal Northlake, LLC (SunCal Northlake”), LB-L-SunCal Oak Valley, LLC (“SunCal Oak  
18 Valley”), SunCal Century City, LLC (“SunCal Century City”), SunCal PSV, LLC (“SunCal  
19 PSV”), SunCal Torrance Properties, LLC (“SunCal Torrance”), and SunCal Oak Knoll, LLC  
20 (“SunCal Oak Knoll”) (collectively, the “Trustee Debtors”, and together with the Voluntary  
21 Debtors, the “Debtors”).

22       4. I have been a member of the team of lawyers working with Paul J. Couchot on the  
23 Chapter 11 cases filed by the Voluntary Debtors. In this capacity, and through the work that I have  
24 performed on the Voluntary Debtors' cases, I have become familiar with the facts stated herein and  
25 if called upon to testify to the same, I could and would testify accurately thereto.

26       5. Attached hereto as Exhibit A is summary of the claims filed by Lehman  
27 Commercial Paper, Inc. (“LCPI”), Lehman ALI, Inc. (“Lehman ALI”), OVC Holdings, LLC, and  
28 Northlake Holdings, LLC (collectively the “Lehman Entities”) in the Debtors’ Chapter 11

1 proceedings. This summary was prepared based upon a review of the claims listed on the dockets  
2 of the individual Debtors.

3       6. True and correct copies of the below described documents were produced by  
4 JPMorgan Chase, Inc. in response to discovery propounded by the SunCal debtors in that certain  
5 adversary proceeding entitled 8:09-ap-01005-ES (the "Adversary"):

- 6       Exhibit B. *Master Repurchase Agreement* (the "MRA") dated August 22, 2008 by  
7                   and between Fenway Capital, LLC ("Fenway Capital") and Lehman  
8                   Commercial Paper, Inc. ("LCPI");  
9       Exhibit C. *Annex I* to MRA dated August 22, 2008;  
10      Exhibit D. *Annex III* to MRA dated August 22, 2008;  
11      Exhibit E. Confirmation dated September 12, 2008 referring to repurchase  
12                  agreements relating to Marblehead Heartland Term Loan and the SunCal  
13                  Communities I Loan;  
14      Exhibit F. Confirmation dated September 12, 2009, referring to the Ritter Ranch  
15                  Term Loan and Delta Cove Senior Loan;  
16      Exhibit G. Confirmation dated September 12, 2009, referring to the Northlake Term  
17                  Loan and the Palm Spring Village Terrace;  
18      Exhibit H. Confirmation dated September 12, 2009, referring to the Oak Valley Term  
19                  Loan;  
20      Exhibit I. Letter from Lehman ALI, Inc. to Fenway Funding, LLC and JPMorgan  
21                  Chase dated November 18, 2008;  
22      Exhibit J. Letter from John E. Costango, Executive Director of JPMorgan Chase  
23                  Bank, N.A. to Deutsche Bank Trust Company Americas dated February  
24                  18, 2009;  
25      Exhibit K. Letter from Amy Wolf, counsel for JP Morgan Chase Bank, N.A. to Irena  
26                  Goldstein, counsel to Fenway Capital, LLC, dated February 18, 2009;  
27      Exhibit L. Letter from Deutsche Bank Trust Company Americas, as CP  
28                  Administrator and CP Collateral Agent to John E. Costango, Executive  
                        Director of J.P. Morgan Securities, Inc. February 19, 2009;

1 Exhibit M. Commercial Paper Note Administration Agreement between Deutsche  
2 Bank Trust Company America and Fenway Funding, LLC;

3 Exhibit N. Guarantee of Lehman Brothers Holdings, Inc. and Fenway Capital, LLC,  
4 dated August 20, 2008; and

5 Exhibit O. List of Largest Secured Creditors filed by Lehman Brothers Holdings, Inc.,  
6 with the United States Bankruptcy Court Southern District of New York.

7. The documents above indicate that the following prepetition loans entered into by  
8 and between the Debtors and one or more of the Lehman Entities have been sold to Fenway Capital  
9 pursuant to a repurchase agreement (the "Sold Loans"):

Loan	Claimant	Alleged Balance
SunCal Communities I Loan	LCPI	\$343,221,391
Ritter Ranch Loan	LCPI	\$287,252,096
SunCal PSV Loan	Lehman ALI	\$88,257,340
SunCal Delta Coves Loan	Lehman ALI	\$206,023,142
SunCal Marblehead/ Heartland Loan	Lehman ALI	\$354,325,126
Sun Cal Oak Valley Loan	OVC Holdings, LLC	\$141,630,092
SunCal Northlake Loan	Northlake Holdings, LLC	\$123,654,777

8. Attached hereto are true and correct copies of the following claims that were filed  
against the Debtors by the Lehman Entities with respect to the Sold Loans:

Exhibit	Debtor	Case No	Claimant	Claims
P	SunCal I	08-bk-17248	LCPI	Claim No. 1
Q	SunCal III	08-bk-17249	LCPI	Claim No. 2
R	Acton	08-bk-17236	LCPI	Claim No. 6
S	Emerald Meadows	08-bk-17230	LCPI	Claim No. 7
T	Bickford	08-bk-17231	LCPI	Claim No. 16
U	Summit Valley	08-bk-17227	LCPI	Claim No. 12
V	Palmdale Hills	08-bk-17206	LCPI	Claim No. 65
W	SunCal PSV	08-bk-17465	Lehman ALI	Claim No. 12
X	Delta Coves	08-bk-17470	Lehman ALI	Claim No. 21
Y	SunCal Marblehead	08-bk-17409	Lehman ALI	Claim No. 9
Z	SunCal Heartland	08-bk-17407	Lehman ALI	Claim No. 21
AA	Sun Cal Oak Valley	08-bk-17404	OVC Holdings	Claim No. 16
BB	SunCal Northlake	08-bk-17408	Northlake Holdings	Claim No. 6

9. After receiving and reviewing the documents produced by JPMorgan Chase,  
including the documents listed above, I spoke to counsel for Fenway Capital, LLC, Irena  
Goldstein, counsel for JPMorgan Chase, Amy Wolf, and counsel for Deutsche Bank Trust  
Company America. During these conversations, I explained that the above documents indicated  
that certain loans made to the Debtors (See, Exhibit I) appeared to be subject to an outstanding  
repurchase agreement pursuant to which title was vested in Fenway Capital, LLC, and that said

1 documents further indicated that JPMorgan held a lien on these loans. None of these lawyers  
2 disagreed with this characterization of the facts. Irena Goldstein stated that Fenway Capital, LLC  
3 had attempted to unwind/terminate this repurchase transaction on September 14, 2008. However,  
4 this termination was predicated upon return of the CP Notes. Ms. Goldstein indicated that it was  
5 her understanding that the attempt to terminate the transaction on this basis failed because these  
6 notes were already pledged to JPMorgan Chase.

7 10. Attached hereto as Exhibit "CC" is a true and correct copy of the "Guidance Notes"  
8 published by the Bond Market Association, which accompany and explain the Master Repurchase  
9 Agreement attached hereto as Exhibit "B."

10 11. Attached hereto as Exhibit "DD" is a true and correct copy of a letter that was  
11 transmitted to counsel for the LCPI, Lehman ALI, Inc., Northlake Holdings, LLC and OVC  
12 Holdings, LLC (collectively the "Lehman Entities") on March 26, 2009.

13 12. Attached hereto as Exhibit "EE" is a true and correct copy of a letter received from  
14 counsel for the Lehman Entities in response to the letter attached hereto as Exhibit "DD."

15 13. Attached as Exhibit "FF" is a true and correct copy of an email sent by Irena  
16 Goldstein dated May 12, 2009.

17 I declare that the foregoing is true and correct under the penalty of perjury under  
18 the laws of the United States.

19 Executed in Orange County, California, on May 29, 2009.  
20

21 /s/ Sean A. OKeefe  
22 \_\_\_\_\_  
23 Sean A. OKeefe  
24  
25  
26  
27  
28

**EXHIBIT C**

JPM-PALMDE00000006

LISHAN COMMERCIAL PAPER INC.

FEDMAX FUNDING LLC  
610 SEVENTH AVENUE  
NEW YORK NY 10019

AS PRINCIPAL, WE CONFIRM THE FOLLOWING TRANSACTION:

CONTRACT NUMBER: JPM010

TRADE DATE: 05/10/2009

PURCHASE DATE: 05/10/2009

REPURCHASE DATE: 05/21/2009

PRINCIPAL: 1,000,000.000.00

REPURCHASE RATE: 3.193%

THE SECURITIES DESCRIBED IN THE SCHEDULES SET FORTH BELOW SHALL BE HELD BY US FOR YOUR ACCOUNT. THE STANDALONE TERMS AND CONDITIONS SET FORTH ON THE REVERSE SIDE OF THE STANDARD FORM OF CONFIRMATION, ARE HEREBY INCORPORATED IN THIS SCHEDULE BY REFERENCE.

05/11/2009

PAGE 1 OF 2

SCHEDULE OF SECURITIES SUBJECT TO  
REPURCHASE CONTRACT - PAROID

SECURITY DESC/ MATURITY DATE	COUPON RATE	POOL/ CUT	ORIGINAL PRICE / % OF PAR	CURRENT PRICE ON PAR	MARKET VALUE
WATKINSON MARYLAND TERM 04/11/2014 UNICOM COMMUNITIES I 07/01/2018	0.00001 0.00001	WH1241 WH1522	216,044,200.00 216,116,278.84	216,778,616.31 216,819,118.35	

REDACTED

WC000044

**EXHIBIT D**

JPM-PALMDE000000

LEHMAN COMMERCIAL PAPER INC.

FIREWALL FUNDING LLC  
810 SEVENTH AVENUE  
NEW YORK NY 10019

PAGE 2 OF 2

05/12/2008  
SCHEDULE OF SECURITIES SUBJECT TO  
REPURCHASE CONTRACT - RADING

SECURITY DESC/ MATURITY DATE	COUPON RATE	POOL/ CUSIP	ORIGINAL PRICE/ # OR SHARES	CURRENT PRICE OR PAY	MARKET VALUE
RITTER RANCH TERM LOAN 07/01/2018 \$100,000 SENIOR 01/01/2017	0.0000%	MH19122 MH19123	208,477,500.00 185,481,788.00	183,628,714.53 170,582,492.36	

REDACTED

TOTAL SHARES.....  
TOTAL N.V. ....  
1,000,000.000.00

WC000046

**EXHIBIT E**

JPM-PALMDBALE00000009

**PENNY RUNNING LLC**  
610 SEVENTH AVENUE  
NEW YORK NY 10019

402 JAR

**SELLER OF SECURITIES SUBJECT TO PURCHASE CONTRACT - PAIGCO**

65/12/2001

REDACTED	REDACTED	REDACTED	REDACTED
REDACTED	REDACTED	REDACTED	REDACTED
REDACTED	REDACTED	REDACTED	REDACTED
REDACTED	REDACTED	REDACTED	REDACTED
REDACTED	REDACTED	REDACTED	REDACTED

TOTAL SHARES

TOTAL H.W.

**1,020,000,000**

WC000048

**EXHIBIT F**

JPM-PALMDE00000010

AMERICAN COMMERCIAL PAPER INC.

TENNEY FUNDING LLC  
110 SIXTH AVENUE  
NEW YORK NY 10013

PAGE 1 OF 1  
09/12/2008

AS PRINCIPAL, WE CONFIRM THE FOLLOWING TRANSACTION:

CONTRACT NUMBER: 510000

TRADE DATE: 01/10/2008

PURCHASE DATE: 01/10/2008

REPURCHASE DATE: 08/25/2008

PRINCIPAL: 1,000,000.00

REPURCHASE RATE: 1.2338

THE SECURITIES DESCRIBED IN THIS SCHEDULE ARE HELD BY US FOR YOUR ACCOUNT. THE STANDARD TERMS AND CONDITIONS OF PURCHASE AND PAYMENT ON THIS TRANSACTION, AS HEREBY INCORPORATED IN THIS SCHEDULE BY REFERENCE, WILL BE MAILED TO YOU UPON EXECUTION OF THIS TRANSACTION.

SCHEDULE OF SECURITIES SUBJECT TO REPURCHASE CONTRACT - SALE

SECURITY PRICE / MATERIAL DATE	COUPON DATE	POOL/ CUTS	ORIGINAL FACE / # OF SHARES	CURRENT FACE OR PAY	MARKET VALUE
OAK VALLEY TERM LOAN 01/01/2011	0.00001	W1203		10,000,000.00	11,111,111.61

REDACTED

WC000050